

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

CP 401/ND/2017

CORAM:

PRESENT: SH. S. K. MOHAPATRA
HON'BLE MEMBER(T)

SMT. INA MALHOTRA
HON'BLE MEMBER (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
16.11.2017**

**NAME OF THE COMPANY: Aude Priya Donatelle Wacziarg EP Engel & Anr.
Vs. Neemrana Hotels Pvt. Ltd. & Ors.**

SECTION OF THE COMPANIES ACT: 241-242

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
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For the Petitioner (s):	Mr. Sudipta Sarkar, Sr. Advocate Mr. Abhinav Vashist, Sr. Advocate with Mr. Aashish Dholakia, Mr. Jayant Mehta, Ms. Nidhi Moha Parashar, Mr. Rohan Chawla, Ms. Gayatri, Mr. Arunesh, Advocates			
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For the Respondent (s):	Dr. U.K. Chaudhary, Sr. Advocate with Mr. K .Datta, Mr. Ashim Verma, Mr. Himanshu Vij, Advocates for R-2			
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	Mr. Amit Sibal, Sr. Advocate with Mr. Shantanu Parashar, Advocates for R 3-5			
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	Mr. Vivek Malik and Mr. Dhawan Jain, Advocates for R-1			
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ORDER

A fresh Petition has been filed. Notice of the same is accepted by the Ld. Counsels for the respondents. Reply be filed within 4 weeks from today. It is submitted that though the petitioner is a 50% shareholder, she has never been involved in the working of the Respondent No. 1 company. Now on account of discord with Respondent no. 2, she wishes to be kept informed about the affairs of the company and has broadly prayed for urgent directions in respect of the following:-

(Lekh Raj Singh)



- a) To be provided with copies of the statutory records and copies of the financial statement including Books of Accounts and Vouchers.
- b) To be provided with fortnightly bank statements and statements of the accrued income and disbursement.
- c) Directions not to alienate, encumber or transfer any of the fixed assets company.
- d) Videography of every board meeting.

2. As per averments, the deceased father of the petitioner Mr. Francis Waeziarg, held 50% equity in the Respondent company. The other 50% shares estates was held by Respondent no. 2. Upon the death of Mr. Waeziarg in February, 2014, the petitioner and her sibling brother stepped into the shoes of their late father. Share of her brother are now a Trust property. The affairs of the company are being looked after by respondent no. 2. Though it is not disputed that the business of the company run solely by Respondent no. 2 has prospered over the years, the grievance of the petitioner arises from the fact that certain litigation expenses and other expenses of personal nature are being debited to the account of the Respondent company. She sought inspection of the statutory record and books of accounts but not all documents were made available to her. The same was avoided on grounds that they were stolen in a burglary at the residence of Respondent no. 2. The factum of theft is sought to be corroborated through an FIR. Ld. Sr. Counsel appearing for the petitioner has submitted that the said FIR clearly shows that the theft was in respect of cash and jewellery only and even otherwise it is incomprehensible why a thief would resort to sealing record of the company which would be of no worth to him. It is submitted that the aforesaid excuse has no legs to stand upon. Further, the petitioner has relied upon the statement of expenses which show disbursement of legal expenses in cases where Respondent no. 2 is litigating with his brother.

3. Given the fact that she represents 50% shareholding in the company and is the only other Director other than Respondent No.2, she wishes to enforce her rights for being involved in the affairs of the respondent company and has urgently prayed for the aforesaid directions for necessary protection of her rights.

4. After hearing, Ld. Counsels at length, this Bench is of the opinion that it would be just and equitable to direct the following:-

- a. The petitioner being a 50% shareholder and a Director in the Respondent Company is entitled to inspect the statutory record and other financial statements including bills and vouchers. She is being permitted to do so. For this purpose she may be accompanied by her Chartered Accountant to carry out inspection of records. Her prayer for being provided copies of the Bills/ vouchers / invoices is not acceptable, at this stage, moresoever, in the light of the allegations against her for collaborating with a direct competitor in the same field of business as that of the Respondent company.

However to avoid any allegation of fabrication, it would be expedient to have all the minutes books and financial statements countersigned by an independent person as may be required by her. For this purposes, we hereby appoint Ms. Kiran Dharam, Advocate (Mobile No. 9810477646), as the local Commissioner who shall visit the Registered Office of the Respondent Company along with the Petitioner to countersign all such documents as may be required by the Petitioner for a just adjudication of this case. Respondent No.2 shall be duly informed in advance about the date and timing of the proposed visit, who shall then ensure that all relevant documents are made available to the Petitioner for her inspection. The fees of the local commissioner is fixed at Rs. 50,000/- for execution of the work which shall paid in the first instance by the Petitioner.

b. A fortnightly statement of Bank Account (s) be submitted to the Petitioner along with the Statement of income and disbursements of the expenses.

c. Due notice of any Board meeting/shareholders' meeting be given as per statutory requirements and videography of the same, if desired, shall be arranged for the Respondent Company. To subvert any allegations, the minutes shall be countersigned by both the Directors.

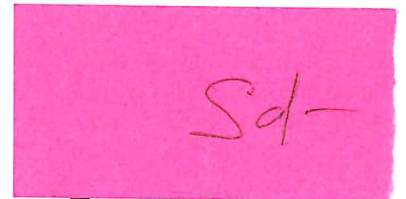
5. It has already been directed by the NCLAT that no policy decision would be taken by the Respondent No.2 alone. Therefore, no specific directions are required in this behalf for taking any policy decision without the proper approval of the Board.

6. Respondent shall ensure due notice of 7 days sent in writing to the Petitioner for every Board meeting. Agenda shall be circulated along with the said notice and no other point shall be taken up for consideration in the said meeting.

To come up on 20th December, 2017.

A redacted signature of S. K. Mohapatra, consisting of a pink rectangular box with the handwritten initials "Sd-" in brown ink.

(S. K. Mohapatra)
Member (T)

A redacted signature of Ina Malhotra, consisting of a pink rectangular box with the handwritten initials "Sd-" in brown ink.

(Ina Malhotra)
Member (J)