

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COMPANY APPLICATION NO. 110/2014 IN
T.C.P. NO.55/397, 398/NCLT/MB/2012

**BEFORE THE NATIONAL COMPANY TRIBUNAL, MUMBAI
BENCH, MUMBAI
COMPANY APPLICATION NO. 110/2014
IN
T.C.P. NO.55/397, 398/NCLT/MB/2012**

CORAM:

SHRI M. K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Sections 397 & 398 of the Companies Act, 1956.
and Section 241, 242 of the Companies Act, 2013.

BETWEEN:

Mr. Rustom Faramroze Titina ... Petitioner

AND

M/s. Ahura Advertisers Pvt. Ltd. & Ors. ... Respondents

PETITIONER:

Mr. Rustom Framroze Titina
M-39, Cusrow Baug, 3rd Floor
Shahid Bhagat Singh Road
Colaba, Mumbai 400 001.

RESPONDENTS

1. M/s. Ahura Advertisers Private Limited
Behramji Mansion, 2nd Floor
4, Homji Street
Sir P.M. Road
Fort, Mumbai 400 001. ... Respondent No.1
2. Khurshed Framroze Titina
G-15, Cusrow Baug, 3rd Floor
Shahid Bhagat Singh Road
Colaba, Mumbai 400 001. ... Respondent No.2

3. Mr. Dhunji Framroze Titina
6311, Gilbert Road
108, Richmond
BC, V7C3V7, Canada ... Respondent No.3

PRESENT ON BEHALF OF THE PARTIES:

FOR THE PETITIONER

Ms. Jennifer Michael, Advocate

FOR THE RESPONDENTS

Mr. Ajay Kumar, Practising Company Secretary

ORDER

**Reserved on : 11.01.2017
Pronounced on: 07.02.2017**

1. This Application is submitted before the then CLB, Mumbai Bench on 16th April, 2014 seeking certain ad-interim directions. In support of this Application Ld. Advocate Ms. Jennifer Michael appeared and pleaded that the Respondents are taking advantage of being in control of the Respondent No.1 Company. The Company is in the business of advertisement by displaying hoardings. The Company was formed by the family members, therefore, this is a family-run-company. In this Application, the Applicant / Petitioner of the main Petition has alleged that the funds of the Company have been misappropriated by the Respondents for their personal purposes. Certain instances of false debit of expenditure have also been narrated in this Application. According to the allegation, the fictitious bills have been debited in the account of the Company. Ld. Advocate has further alleged that under the head "business promotion" expenses were claimed without supporting vouchers or bills. Certain other expenses

such as "refreshment expenses", "travelling expenses", "festival expenses", "miscellaneous payments to government authorities", etc. have also been seriously challenged. In this Application there is a reference of a meeting of the Directors held on 30th of August, 2010 where it was resolved that each one of the Directors will keep ₹15,000 towards "petty cash" for expenses. The allegation is that the Auditor has not performed his professional duty correctly and the accounts have been manipulated. Several gift vouchers in the name of BMC Officials have also been shown as liability. Personal restaurant expenses have also been debited in the accounts of the Company. Finally, the prayer is summarised as under:-

- (a) Pending the final disposal of the Petition, direction be issued to sign the cheques jointly by the Applicant and other Directors. The Standard Chartered Bank having Current Account No. 2310502552 of the Respondent Company be directed not to honour the cheques of the Company unless signed by two Directors, one of them must be the Applicant / Petitioner;
- (b) Pending final disposal, the Respondent Company be restrained to change / alter the existing shareholding pattern and the constitution of the Board;
- (c) Pending final disposal of the Petition, the properties of the Respondent Company must not be alienated;
- (d) The communication of meetings of the Company be addressed to M-39, Cusrow Baug, 3rd Floor, Shahid Bhagat Singh Road, Colaba, Mumbai 400 001, the residential address of the Applicant.

2. Mr. Ajay Kumar, Practising Company Secretary, appearing for the Respondents, vehemently challenged all the allegations. It is pleaded that all the expenses are duly vouched and related to the business activity of the Company. There is no truth in the allegation of siphoning of the funds or expense for personal use. It is informed that the Respondent No.2 and others are working hard to run the advertisement business. The Applicant is not at all looking after the business activity of the Company. The orders of advertisements are procured by Respondent No.2 by putting great efforts. Because of the personal efforts of the Respondent No.2 the Company is running, otherwise due to lack of participation of the Petitioner the Company would have been closed by now. Several instances have been mentioned to demonstrate that the business of the Company has been efficiently managed by the Respondents. Sometimes if funds are required, the same are also contributed / arranged by the Respondents, on the other hand, the Petitioner has never tried to financially help the Company. Ld. Advocate has finally pleaded that in a situation when the Petition is pending for disposal the ad-interim relief is premature, hence not to be allowed. Nevertheless, to avoid the confrontation among the family members a suggestion was made that to run the day-to-day expenses of the Company, the Respondents may be allowed to withdraw a sum of ₹35,000/- per month in cash from the bank. It has also been suggested that since the pleadings have already been completed, therefore, the Petition should be decided finally.

3. Heard the rival submissions at some length. At the outset, it is worth to mention that the Company is more like a family concern being managed by the family members as Directors. Some of the allegations of misuse of funds for personal purposes are also not substantial, rather petty in amount. Records of the case have revealed

that in the past an attempt was made to settle the differences / disputes amicably as recorded in an Order of CLB dated 20th of June, 2013. Therefore, this Bench is also of the view that pending final disposal if there is a possibility of amicable settlement among the family members the same must be explored on the lines suggested in the said Order.

3.1 While adjudicating this type of litigation, it is necessary to keep in mind the welfare of the Company and side-by-side also to protect the interest of the parties in litigation. Therefore, ad-interim arrangements are required to be made so that the day-to-day business of the Company must not be adversely affected and the business interest of the Directors be also protected. Keeping this basic principle in mind, it is hereby directed as under:-

- (a) Pending final disposal, the Current Account maintained with Standard Chartered bank bearing No. 2310502552 shall be operated by the cheques signed by two Directors – one of them should be the Applicant / Petitioner. The Petitioner / Applicant shall co-operate in signing cheques by visiting the office of the Company during office hours whenever demanded so that the business of the company should run smoothly;
- (b) Pending disposal of the case, the Respondent No.2 is restrained from altering the shareholding pattern or the constitution of the Board;
- (c) Pending disposal of the case, the immovable properties / assets of the Respondent Company must not be sold or alienated;

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(c) Henceforth Notices of meetings shall also be communicated to the Petitioner at the address of the Petitioner at M-39, Kusrow Baug, 3rd Floor, Shahid Bhagat Singh Road, Colaba, Mumbai 400 001.

(d) The Respondents are authorised to withdrawn cash of Rs.35,000/- (Rupees thirty five thousand only) monthly from the bank account to meet the day-to-day cash expenses of the Company.

4. The aforementioned Application is disposed of in the terms directed hereinabove and to be consigned to records.

5. T.C.P. No. 55/397, 398/NCLT/MB/2012 be listed for final hearing on 27th February, 2017.

Sd/-

Dated: 7th day of February, 2017

M. K. SHRAWAT
MEMBER (JUDICIAL)