

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P No.20/(GOA)/2017  
CA No.


CORAM:

Present: SHRI M. K. SHRAWAT  
MEMBER (J)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 17.02.2017

NAME OF THE PARTIES: M/s. Federico Bruno  
V/s.  
M/s. Creamchoc Ice Creams Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 241, 242, 244, 246 of the Companies  
Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
1	Gandhar Raikar	Advocate (Petitioner)	

**ORDER**

**C.P. NO. 20/241, 242, 244, 246/NCLT/MB/Goa/2017**

1. The Petition under consideration was filed on 10<sup>th</sup> of February, 2017, admittedly without serving a copy to the Respondents. The Petition is u/s 241/242/244/246 of the Companies Act, 2013 alleging oppression and mismanagement.

2. On behalf of the Petitioner, Ld. Representative has pleaded to grant an ex-parte injunction against the Respondents. He has informed that as per the reliefs sought in the Petition, one of the reliefs is to grant injunction for transferring / alienating the plant and machinery as listed in Exhibit-S of the Petition. According to him, the Tribunal has power to exempt under Rule 14 the Petitioner from compliance of any requirement prescribed in NCLT Rules. He has further elaborated that even without serving the Petition to the other side, the Tribunal can entertain the request of ex-parte injunction. Reliance has been placed on few interlocutory orders of the CLB passed way back in the year 2012.

3. Heard at some length. Petition perused. In an admitted situation when the Petition has not been served by the Petitioner on the other side and simultaneously seeking an ex-parte injunction, prima facie the prayer is not justifiable. If we compare the provisions of the Companies Act, 2013 with the law laid down in Order 39, Rule 1 of CPC, it is provided that where in a Suit it is proved by Affidavit or otherwise that any property in dispute in a Suit is in danger of being alienated by a party to the Suit or the Defendant intends to dispose of the property with the intention to defrauding the Petitioner, then the Court if satisfied can grant a temporary injunction to restrain such act of alienation. Although it is a trite law that a temporary injunction can be granted on an interlocutory application at any stage of a Suit; but mandatory procedure has to be followed. However, an injunction is a judicial process. The process thus prescribes that the apprehension should be without doubt and imminent. It is the duty of the Applicant to establish by placing corroborative evidence on record and to prove to the hilt that the other side is about to dispose of the property in question. In the present case, no such evidence is on record. The Petitioner has simply expressed an apprehension but not proved the immediate danger. The fear or the anxiety should have some justifiable basis. It is held in number of cases that suspicion howsoever so strong cannot take place of legal proof. A substantive corroborative evidence cannot be substituted. Merely on an assumption of a person the Court cannot take cognizance of such unsubstantiated fear.

4. From the Petition, it is appearing that the machinery in question is the property of the Respondent No.1 Company. Once the machinery is part and parcel of the assets of the Company duly reflected in the books of accounts as well as reflected in the balance sheet, then no person can usurp the property. Such an action tantamount to embezzlement or misappropriation of the property of the Company. The Court has power to deal with any such wrongful act. Because of this reason, the machinery / assets of the Company are very well protected under law.

5. As a result, I am of the view that no ex-parte injunction can be granted to the Petitioner at this preliminary stage when the other side has not been given an opportunity to defend itself / himself.

6. The Petitioner is directed to serve a copy of the Petition along with enclosures thereto under Rule 24 of NCLT Rules to the Respondent within a week's time, preferably on or before 24<sup>th</sup> of February, 2017. The Petitioner thereafter shall place on record an Affidavit affirming the service of Petition. The Respondent on receipt of the Petition shall file a Reply within a period of three weeks, needless to mention a copy in advance to the other side. A Rejoinder, if any, can be filed within one weeks' time. The Registry is directed to list this matter for hearing on **6<sup>th</sup> of April, 2017**. Circulate this Order.

Sd/-

Dated: 17th February, 2017.

**M.K. SHRAWAT**  
**MEMBER (JUDICIAL)**