

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
I.A. NO. 04/2017
IN
TCP NO. 88/397, 398/NCLT/MB/MAH/2014**

CORAM: **SHRI M.K. SHRAWAT**
MEMBER (JUDICIAL)

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

M/s. Courchevel Trading Private Ltd .. Applicant

BETWEEN:
Mr. Purshotam Vishandas Raheja & Ors. .. Petitioners
AND
M/s. Courchevel Trading Private Ltd. & ors. .. Respondents

APPLICANT

M/s. Courchevel Trading Private Ltd
Vaswani Gardens, Ground Floor
Behind Atur Terraces
25, Sobani Road
Cuffe parade
Mumbai 400 005.

PETITIONERS

1. Purshotam Vishandas Raheja
84, Nepean Sea Road
Mumbai 400 006. .. Petitioner No.1
2. Ms. Shakuntala Purshotam Raheja
84, Nepean Sea Road
Mumbai 400 006. .. Petitioner No.2

3. Mr. Jitendra Purshotam raheja
84, Nepean Sea Road
Mumbai 400 006. .. Petitioner No.3
4. Mr. Mahesh Purshotam Raheja
Raheja Regale, 17th Floor
84, Nepean Sea Road
Mumbai 400 006. .. Petitioner No.4
5. Ms. Priti Purshotam Raheja
84, Nepean Sea Road
Mumbai 400 006. .. Petitioner No.5

RESPONDENTS

1. M/s. Courchevel Trading Private Ltd
Vaswani Gardens, Ground Floor
Behind Atur Terraces
25, Sobani Road, Cuffe parade
Mumbai 400 005. .. Respondent No.1
2. Ms. Asha Shrichand Raheja
Raheja Regale, 19th Floor
84, Nepean Sea Road
Mumbai 400 006. .. Respondent No.2
3. Ms. Laxmi Shrichand Raheja
Raheja Regale, 19th Floor
84, Nepean Sea Road
Mumbai 400 006. .. Respondent No.3
4. Mr. Janak H. Vaswani
Vaswani Garden
25, Sobani Road
Mumbai 400 006. .. Respondent No.4
5. Ms. Renuka vaswani
Vaswani Garden
25, Sobani Road
Mumbai 400 006. .. Respondent No.5
6. Mr. Ravi aswani
Vaswani Garden
25, Sobani Road
Mumbai 400 006. .. Respondent No.6

7. Mr. Gobind Bulchand Vaswani
Vaswani Garden
25, Sobani Road
Mumbai 400 006. .. Respondent No.7
8. Mr. Varun Gobind Vaswani
Vaswani Garden
25, Sobani Road
Mumbai 400 006. .. Respondent No.8
9. Mr. Deepak Tilak Vaswani
Vaswani Garden
25, Sobani Road
Mumbai 400 006. .. Respondent No.9

PRESENT ON BEHALF OF THE PARTIES

FOR THE PETITIONER

Mr. Vishal Kanade, Advocate along with Ms. Megha Sharma,
Advocate i/b Ranjit and Co.

FOR THE RESPONDENTS

Mr. Sharan Jagtiani, Advocate along with Mr. Aditya Pimple,
Advocate and Mr. S. Deshpande, Advocate i/b Desai & Dewanji.

ORDER

Heard on : 20.02.2017

Date of Order : 20. 02.2017

1. The Application under consideration was filed on 9th February, 2017 before NCLT, Mumbai Bench by the Respondents of the main Petition (C.P. NO. 88/397, 398/CLB/MAH/2014) seeking interim relief as under:-

"(a) pass an order allowing Applicant to renew the term of the Leave and License Agreement dated 19th September 2014 (being Exhibit A hereto)."

2. Ld. Representative of the Applicant (Respondent of the main Petition) has informed that a leave and licence agreement between Respondent No.1 Company and COMMERZABANK AG was executed on 19th of September, 2015 in respect of a premises No.5 of Savoy Building, Nepean Sea Road, Mumbai for a licence fees of ₹5,50,000/- per month which is expiring by the end of February, 2017. He has further pleaded that there is no fresh agreement but only renewal of the old agreement, that too for a limited period of four months i.e. for the period of 1st March, 2017 to 30th June, 2017. He has also pleaded that the previous agreement dated 19th September, 2015 was very much in the knowledge of the Petitioners.

2.1 At this juncture, he has referred an Order of the CLB, Mumbai Bench dated 30th October, 2014 according to which certain directions have been issued, for reference reproduced below verbatim:-

"4. Having heard the Petitioner's Counsel and the authorised representative representing the Respondents, by way of ad-interim order, it is directed that the respondents shall not sell, alienate and/or create any third party rights and/or part with possession of the immovable assets of the Respondent No.1 Company, save and except it is necessary to do so in its interest, that too after giving atleast 15 days prior intimation in writing to the Petitioners indicating all particulars viz. name of the prospective purchaser, sale consideration and the purpose. Further, the company is directed to maintain status quo with respect to its shareholding pattern as it exists today. In so far as the ad-interim relief sought by the Petitioners for restraining the Respondents from acting upon the impugned Deed of Apartment dated 25/07/2014 is concerned, the same shall be considered after reply is filed by the Respondents. The Petitioner may also implead the other companies mentioned in the Deed of Apartment as Respondents in the array of the Parties, if so advised."

He has elaborated that the present proposal is merely an extension of leave and licence agreement; hence neither creating any third party rights nor alienating any immovable property. The said proposal of

renewal was duly communicated 15 days prior in writing to the other side. In short, he has conveyed that there was no infringement of the said Order of the Respected CLB. The previous leave and licence agreement was in accordance with a Board Resolution dated 20th of January, 2014, therefore, the bona fide intention should not be doubted.

3. From the other side i.e. Respondent of the Application (Petitioner of the main Petition) has strongly opposed the renewal of the said agreement. It is argued by the Ld. Advocate that the impugned Board Resolution is very much in dispute, hence any consequential decision on that basis being sub-judice should not be allowed. Rather it is pleaded that the Petitioners were not informed, hence unaware about the alleged leave and licence agreement. The decision taken by the Respondents as well as the Minutes of the Meeting have never been communicated. There was a "Deed of Apartments" executed on 25th of July, 2014 which is not acceptable and seriously contested because the Petitioners were ousted from the management of the properties by the Respondents. Any subsequent decision or action on the part of the Respondents connected with the property in question is not a bona fide action, hence should not be approved by this Bench. When confronted during arguments that no prejudice shall be caused to the Respondent Company since the rent from the said Bank must always be received through cheque as well as subject to TDS, an alternate plea was raised that the expenditure incurred in the name of the maintenance is doubtful and never being incurred with the approval of the Petitioners.

4. In the Rejoinder-argument, the Applicant has suggested few alternate points for due consideration as under:-

"POINTS ON BEHALF OF THE APPLICANT"

1. Without prejudice to our rights and contentions, the Applicant in I.A. No. 4/2017 (Respondent No.1) will renew / extend the leave and Licence Agreement dated 19 September 2014 (Exh. 'A' at pg.10) for a further period of 4 (four) months, i.e. from 1 March 2017 to 30 June 2017.
2. In case of any further renewal / extension is sought after the expiry of the 4 (four) month period (i.e. after 30 June 2017), the same will be done with leave of this Hon'ble Bench by giving the Petitioner (Respondents in the present I.A. No. 4/2017) 15 days' prior intimation in terms of the ad-interim order dated 30 October 2014 in C.P. No. 88 of 2014."
5. Heard both the sides at some length. At this juncture, at the outset, it is necessary to make it clear to both the sides that this judgement being interlocutory in nature shall not have any consequential effect or bearing on the merits of the main Petition. No party shall, therefore, pre-judge the decision yet to be taken while deciding the main Petition on merits as well as on law. The objection of the Respondents (Petitioner of the Petition) is that in a situation when the Respondents have been restrained vide an Order dated 30th October, 2014 by the CLB, Mumbai Bench, not to deal with the immovable assets then the Applicants should not be allowed to extend the leave and licence period. On careful examination of the said verdict, in my humble opinion, the said Order had prohibited the Respondents not to sell or alienate or create any third party rights or part with possession of the immovable assets of the Respondent No.1 Company. An exception was that if it is necessary to safeguard the interest of the Company, that too after giving at least 15 days prior intimation in writing to the Petitioner, the Respondents can deal with the property. As far as the formality of 15 days is concerned, the same has already been complied with.
- 5.1 The other anguish of the Petitioner is that the rent received is not duly accounted for in the Company's accounts. To remove this

apprehension, it is hereby directed that the Respondent No.1 Company can renew the impugned leave and licence agreement for a further period of four months i.e. up to 30th of June, 2017 on the same old terms. The rent obviously be received through banking channel, hence expected to be duly recorded in the books of accounts of the Company, which is also subject to Tax Deduction at Source. The Respondents are hereby allowed to withdraw the amount only through cheque that too for the expenses having direct nexus with the maintenance of the property in question. The rent accounts of the four months should be maintained in perfect manner without having an iota of doubt. All the expenditure incurred should be fully explainable and justifiable. If demanded, the R1 Company is under strict obligation to place the said accounts before this Bench.

5.2 By extending four months lease period, no prejudice is going to cause to the Petitioners. Rather, this decision is taken by keeping in mind the practical aspects of difficulty in leasing out a property as well as uninterrupted inflow of the revenue receipts in the hands of the Company. All the stakeholders shall, therefore, get the consequential benefit. During this period of four months the Company can look for better proposal of rent. The Petitioner has indicated that the prevailing rent rates are higher than the rent received from the said tenant / bank. Considering this aspect as well in mind, the Respondents are directed to give Petitioners a 15 days prior intimation giving complete details before leasing out this property in future. Side-by-side, the Petitioners are hereby given liberty to make a matching offer of licence fees so that the terms and conditions can be compared and the beneficial recourse shall be adopted. In this manner, the grievance of the Petitioners is also addressed.

6. The interlocutory Application is allowed on the terms and conditions as held above. The Application being disposed of is to be consigned to records.

Sd/-

Dated: 20th February, 2017

M.K. SHRAWAT
MEMBER (JUDICIAL)