

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **F.A.O. No.14/2013 and CM No.501/2013 (Stay)**

Decided on : 20th September, 2013

FUSION FOODS Appellant

Through: Mr. Ashish Upadhayay, Advocate.

Versus

INDIAN TOURISM DEVELOPMENT CORPORATION LIMITED

..... Respondent

Through: Mr.Sushant Kumar and Ms.Shikha Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is an appeal filed by the appellant under Section 37 of the Arbitration and Conciliation Act, 1996 against the judgment dated 27.11.2012 passed by the learned Additional District Judge-I, in Arbitration No.225/2012, dismissing the petition of the appellant under Section 9 of the Arbitration and Conciliation Act, 1996 wherein the prayer of passing an ad interim order seeking direction to the respondent to supply liquor in terms of the agreement between the parties was dismissed.

2. I have heard the learned counsel for the parties and gone through the record.
3. Briefly stated, the facts of the case are that the appellant had been granted a licence to run a Multi Cuisine Restaurant-cum-Bar on an area measuring 367 square meters by the respondent in its hotel by the name of Hotel Samrat, Chanakya Puri, Kautilya Marg, New Delhi, for a period of three years. The licence agreement was executed between the parties in the month of July, 2005 for a period of three years which was further renewable for a period of another three years. In terms of the licence agreement, the appellant/licensee was to incur the capital expenditure for the purpose of providing furniture and ambience to run the Multi Cuisine Restaurant-cum-Bar.
4. The case of the appellant was that as he has incurred huge capital expenditure and as per the policy of the respondent, the initial licence period ought to have been for a period of five years and renewable by another period of five years, therefore, he ought to, in all, get ten years to run the restaurant.

5. It was further contended by the appellant that the respondent after the expiry of the period of second spell of three years of the licence agreement has stopped the supply of liquor and other facilities like air conditioning, electricity, water etc., as a consequence of which not only the functioning of the bar in the restaurant has stopped, but it has also resultantly reduced the footfalls in the restaurant because most of the visitors who come for eating also consume liquor. It was further stated that the respondent, apart from stoppage of supply of liquor and suspension of other facilities like electricity and water, has debited the account of the appellant with the licence fee for supply of liquor for the financial year 2012-2013 as well as 2013-2014. It was also contended that in terms of the licence agreement, 50% of the sale proceeds of the liquor had to go to the respondent and, therefore, by stoppage of supply of the liquor by the respondent, it is not only causing a serious prejudice to the appellant in running the restaurant but is also causing financial loss to the appellant as well as to the respondent.

6. The respondent filed its reply to the appeal and contested the application for grant of interim relief. It was stated by them that since the arbitrator is already seized of the matter, therefore, it would have been just and proper for the appellant herein to have approached the arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996 for passing of an ad interim order. In addition to this, it has been stated that the licence agreement even by way of second spell having coming to an end, the respondent has declared the appellant to be an unauthorized occupant and initiated proceedings for their ejection with the Estate Officer where the case is pending for the purpose of adducing evidence by the parties. It was also contended that by extending the facility of supply of liquor to the appellant and resuming other facilities like air conditioning, electricity, water etc., the respondent would be in effect extending the period of licence.
7. So far as the question of original licence being for a period of five years instead of three years is concerned, it has been contended by the learned counsel for the respondent that this issue is no more *res*

integra as this issue stands concluded by the judgment of this court in *M/s Hotel Natraj v. Union of India & Ors.*; ILR (2008) Supp. 6 Delhi 82 wherein the learned single Judge of this court observed that a party having enjoyed the entire period of licence granted to him, could not turn round and say that the initial period of licence ought to have been five years and not three years. It was stated that the present appeal seeking an ad interim relief of supply of liquor and resumption of other facilities like air conditioning, water, electricity, etc. during the arbitration proceedings was neither legal nor could it be supported by the facts of the case. The learned counsel for the respondent has prayed for dismissal of the appeal.

8. I have heard the learned counsel for the parties and gone through the record.
9. I have also gone through the judgment of the learned single Judge of this court. There is no dispute about the proposition of law which is laid down by the learned single Judge of this court in *M/s Hotel Natraj v. Union of India & Ors.'s case (supra)*. This is precisely on account of the fact that firstly, if at all, the appellant

was aggrieved on account of the grant of licence for a period of three years as being arbitrary, illegal or unreasonable, either he ought not to have accepted the licence, or if he had accepted the same, then, after having availed of the benefit of the said licence, not once but twice, and the period of licence having come to an end, it was not open to the appellant to turn around and contend that the original licence period and the so-called subsequent renewal period ought to have been five years each and not three years because, in my considered opinion also this will be hit by the Doctrine of Estoppel. I am of the considered opinion that this plea of the learned counsel for the appellant could not be treated as a ground for directing the respondent to supply liquor to the appellant and resume other facilities like air conditioning, water, electricity, etc. for the purpose of running the Multi Cuisine Restaurant-cum-Bar.

10. So far as the issue of giving directions to the respondent for supply of liquor and resumption of other facilities is concerned, that can be considered by the court provided the appellant satisfies the three

basic requirements which one has to satisfy before an ad interim order is passed in its favour. These, three requirements are that the appellant must show: i) that it has a prima facie very good case; ii) that it shall suffer an irreparable loss in case the ad interim injunction is not granted and iii) that the balance of convenience is in favour of the appellant.

11. I will first take the question of balance of convenience. So far as the question of balance of convenience is concerned, that admittedly is in favour of the appellant. This is on account of the fact that even though the appellant may be termed to be an unauthorized occupant by the respondent in respect of the licensed premises, but still he is in occupation and he is to be evicted by a due process of law. This 'due process of law' has already been availed of by the respondent by filing a petition for the eviction of the appellant from the licensed premises, which is pending adjudication before the Estate Officer. This is notwithstanding the appellant's plea to have the licence not only originally but at the time of first renewal, ought to be five years, is, in my opinion, not

only beyond the scope of the agreement but also not very relevant so far as the disposal of the application of the appellant under Section 9 of the Arbitration and Conciliation Act, 1996. What is material is that admittedly the appellant was given the licence for the purpose of running a Multi Cuisine Restaurant of which the bar was an integral part. The respondent was not only sharing 50% of the proceeds of the bar but had also made the appellant to pay the licence fee to the Excise Department of the Govt. of NCT of Delhi for the purpose of seeking permission to serve liquor in the Multi Cuisine Restaurant-cum-Bar. I have been informed that the licence fee was to the tune of ₹5 lakhs which has not only been debited from the account of the appellant for the financial year ending 31.03.2013 but also for the current financial year starting from 01.04.2013 till 31.03.2014. If the respondent had debited the account of the appellant by five lakhs or so by way of licence fee, there was no justification for the respondent to have stopped the supply of liquor and suspend other facilities like air conditioning, electricity, water etc., to the appellant. Admittedly, in the instant case, the appellant is in possession of the licensed premises and it

is not the case of the respondent that the appellant is not running a Multi Cuisine Restaurant-cum-Bar on a day to day basis. Under such circumstances, the very stoppage of the supply of liquor to the restaurant is causing financial loss to the appellant and thus it can be very conveniently said that the balance of convenience is in favour of the appellant. In case supply of liquor is restored till the final eviction order by the Estate Officer is passed, then the respondent shall also suffer loss because 50% of the sale proceeds of the liquor go to the respondent.

12. The appellant is admittedly suffering irreparable loss because of the discontinuation of supply of liquor inasmuch as not only the bar has been closed, but also the fact that the number of visitors in the restaurant has reduced after coming to know that the bar in the hotel has stopped functioning and this would result in considerable lessening of footfalls in the Multi Cuisine Restaurant-cum-Bar and thereby it is likely to cause irreparable loss to the appellant. This point gets further fortified by the fact that the appellant's account has already been debited by way of licence fee for obtaining excise

licence to serve liquor at the Multi Cuisine Restaurant-cum-Bar in question till 31.3.2014 though no liquor is being supplied.

13. The last point which arises for consideration is whether the appellant has a prima facie case or not. So far as the question of prima facie case is concerned, no doubt the plea of the appellant that he ought to have been given the initial licence for a period of five years and renewal of licence by another five years instead of three years, is untenable in law in the light of the judgment of this court in *M/s Hotel Natraj v. Union of India & Ors.'s case* (supra), but still the fact of the matter is that as on date, the appellant having been declared as an unauthorized occupant and the proceedings against him having been initiated before the Estate Officer, he continues to be in possession of the licensed premises. If he continues in possession of the licensed premises and is being permitted to serve other eatables, lunch and dinner, there is absolutely no justification for the appellant being deprived to supply the liquor which will be to the benefit of the appellant as well as to the benefit of the respondent. Therefore, I feel that on

this score also, the present appeal for grant of an ad interim relief for supply of liquor by the respondent to the appellant ought to have been allowed.

14. For the reasons mentioned above, I feel that the learned ADJ by dismissing the petition of the appellant under Section 9 of the Arbitration and Conciliation Act, 1996 has taken a too technical and parochial view, which, in my considered opinion, would not be sustainable in the eyes of law as the appellant has been able to satisfy all the three conditions required for the purpose of obtaining an ad interim injunction.
15. I accordingly allow the appeal of the appellant and set aside the order passed by the learned ADJ and direct that the respondent to supply the liquor to the appellant and also resume other facilities like air conditioning, electricity, water etc. so that the Multi Cuisine Restaurant-cum-Bar can run. However, this benefit shall be given to the appellant only till the time a formal order of unauthorized occupation, if any, is passed by the Estate Officer.

16. The court has been informed that the matter before the Estate Officer is at a fairly advanced stage and in case the Estate Officer is inclined to modify this order keeping in view the fact that the appellant is indulging in dilatory tactics so far as the disposal of the petition before it is concerned, it shall be free to take up the matter as expeditiously as possible and this will also entitle the respondent to file an application for withdrawing the benefit which has been granted to the appellant by virtue of the present ad interim order.
17. Accordingly the appeal is allowed. The expression of any opinion hereinbefore shall not be treated as an expression on the merits of the case.

V.K. SHALI, J.

SEPTEMBER 20, 2013
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