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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION
## ARBITRATION PETITION (L) NO. 11 OF 2017

Sandeepkumar Dinkarrao Unune ...Petitioner

*Versus*

Maharashtra Tourism Development Corporation Limited ...Respondent

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**Mr. Ashok Misal**, *for the Petitioner.*
**Mr. S.P. Bharti**, *for the Respondent.*

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**CORAM: G.S. PATEL, J**
**DATED: 12th January 2017**

**PC:-**

**1.** It is not possible to grant any relief in this Petition under Section 9 of the Arbitration & Conciliation Act, 1996.

**2.** The Petitioner is the Licensee of what appears to have been a restaurant with some overnight residential facilities at Karla in Pune District, between Lonavala and Pune, near the ancient and famous Karla caves. The Respondent, the Maharashtra Tourism Development Corporation Limited (**"MTDC"**), a State-owned corporation. It invited sealed offers for running this establishment under a tender notice of 2010. The Petitioner was the successful bidder. He entered into an agreement dated 10th November 2010 with MTDC. This is a registered agreement. It allowed the

Petitioner to operate and run the establishment. A copy of the agreement is annexed to the Petition.[1] The agreement makes it clear *inter alia* in Clause 9 that what was granted was a bare license. Under the agreement, the Petitioner was bound to pay a license fee that is set out in Clause 6 (page 17 of the Petition). The license fee had a lock in of Rs. 1.25 lakhs per month for the first five years and then a graduated annual increase from the sixth to tenth years. In the last year of the license agreement, the monthly license fee was Rs. 2,10,313/-.

**3.** There is no dispute that the Petitioner was put in possession, began running the restaurant, placed a security deposit of Rs. 8,76,670/- and also gave a bank guarantee in the sum of Rs. 17,57,341/-, all in compliance with the conditions of the tender and license.

**4.** It seems that the establishment had some residential rooms and six dormitories. The Petition itself states that after June 2014, the Petitioner was compelled to close down some of these rooms and the six dormitories. It appears from a reading of paragraph 2(h) of the Petition that there was a decline in the food service facilities in the restaurant and this is *inter alia* apparent from the Petitioner's assertion that he was allowing outside food to be brought into the restaurant. Of course, the Petitioner alleges that the MTDC gave a catering contract to another contractor in the same premises, but there are no details pleaded or shown. In any case, I am not deciding this controversy.

**1** Exhibit "A", *pp.* 13-32.

**5.** It is not in dispute that the Petitioner paid less than the required contractual license and made requests to the MTDC for a reduction in the monthly compensation and for being excused from a renewal of the required bank guarantee. On a plain reading of the agreement, the Petitioner was in breach.

**6.** It seems that on 18th May 2016, MTDC took a decision to the effect that the Petitioner was in breach and ultimately on 14th December 2016 terminated the license agreement of 10th November 2010. It is pursuant to this that MTDC resumed possession of the establishment.

**7.** The Petitioner moved this Court in Vacation (MS Sanklecha J). Even at that time, a statement made by Mr. Bharti on behalf of MTDC, Respondent No. 1, was noted that possession of the restaurant had been taken that morning (2nd January 2017) and a panchanama had already been drawn. A copy of a communication dated 2nd January 2017 was taken on record. Mr. Bharti stated that no further rights would be created in respect of the suit restaurant till 6th January 2017.

**8.** Thereafter the matter was mentioned on 5th January 2017 and it was stood over to today. The interim protection was continued till 11th January 2017.

**9.** In my view, it is not possible to grant prayer clause (a) of this Petition. This is for an order directing the MTDC to allow the Petitioner to run and manage the restaurant. That is more in the nature of mandamus or at least a mandatory injunction compelling a State-run Corporation to enter into a contract with the Petitioner and it is clearly not permissible under Section 9 of the Arbitration & Conciliation Act, 1996. Prayer (b), for a restraint against the Respondent from taking possession, is now infructuous. All that remains is prayer clause (c), for an injunction restraining the Respondent from creating 'third party rights'. Apart from the fact that this is nothing but prayer (a) in another guise, it is difficult to see how this prayer can be granted given the admitted position that it is the Petitioner who, for whatever reason, is in default. It is not even the case of the Petitioner that the termination is wrongful (there is no such averment) or that there was any wrongful conduct on the part of the MTDC, other than a stray assertion that MTDC permitted another contractor to manage catering in that restaurant, and that is an allegation that is devoid of all particulars altogether.

**10.** No case is made out for the grant of relief. The Petition is dismissed. There will be no order as to costs.

**(G. S. PATEL, J.)**