

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 1402 OF 2014
WITH
NOTICE OF MOTION NO. 1888 OF 2015**

The Comedy Store Ltd	...Petitioners
<i>Versus</i>	
Horseshoe Entertainment & Hospitality Pvt Ltd & Ors	...Respondents

Mr Dhiraj Mhetre, *a/w Ms S. Tewari, Zaiboa Thingna, i/b Khaitan
Legal Associates, for the Petitioners.*
Mr Rahul Jain, *i/b RES Legal, for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 18th January 2017

PC:-

1. The Respondents (“**Horseshoe Entertainment**”) to this Arbitration Petition filed Arbitration Petition No. 890 of 2012 under Section 9 of the Arbitration and Conciliation Act, 1996 pertaining to a Share Subscription and Shareholders Agreement dated 13th November 2018. I have by a separate order today dismissed the Respondents’ Arbitration Petition No. 890 of 2013. The present Arbitration Petition No. 1402 of 2014 is filed by the Respondents in Arbitration Petition No. 890 of 2013, (“**The Comedy Store**”).

2. There was an order of 15th October 2015 (RD Dhanuka J), which reads thus:

“Learned counsel appearing for the Petitioners states that he seeks to apply for discharge of the matter in view of the Petitioners not giving instructions in the matter. The Advocates on record may apply for discharge before the concerned officer of this Court and shall inform the Petitioners about the same. Office is also directed to issue notice to the Petitioners to engage any other Advocate before the next date and it is made clear no further adjournment would be granted. S.O. to 19th November, 2015.”

3. This makes it clear that even a year and a half ago, Horseshoe Entertainment only sought time. This was its conduct in its own Arbitration Petition, the one I dismissed today. I have in the separate order also noted that before the Arbitral Panel, Horseshoe Entertainment has not yet filed any statement of claim. In short, all that Horseshoe Entertainment does is to delay the matter at all levels.

4. Mr Justice Dhanuka’s order of 15th October 2015 also directed Affidavits of disclosure to be filed within two weeks from the date of communication of that order. The present Notice of Motion by Horseshoe Entertainment seeks a recall of that order and then a dismissal of the Comedy Store’s Arbitration Petition.

5. Before I turn to the grounds cited for recall, I must note that Horseshoe Entertainment admittedly had notice of the order of 15th October 2015 on 24th October 2015. I could have considered a short extension of time for a couple of weeks to comply. What I have instead is continued non-compliance coupled with an application for recall of that order and dismissal of the Comedy Store's Arbitration Petition.

6. The grounds given in the Affidavit in Support of the Notice of Motion are most curious. These sets out in paragraphs 5 and 6:

"5. I say that as Ms. Kaul's father was unwell and hospitalized, she was on leave for more than three weeks prior to the date of the hearing of the captioned petition on 15th October 2015. In view of the aforesaid circumstances, Ms Kaul who was fully ceased of the matter, could not give instructions to the erstwhile advocates for the hearing on 15th October 2015. All emails that were addressed to her remained up-replied in view of the circumstances narrated herein. I say that subsequently, due to the demise of her father Ms Kaul is no longer in the employment of the Applicant No. 1. No one else in the organization was ceased of the matter and thus could not give necessary instructions. In view thereof timely instructions could not be given to Advocates.

6. I further say that since the Applicant No. 2 was also travelling abroad from 14th October 2015 to 25th October 2015, the Applicant No. 2 was not in

the position to give appropriate instructions to the erstwhile Advocates for the hearing on 15th October 2015 as the Applicant No. 2 had limited access to his emails and calls. A copy of the travel documents along with the passport of the Applicant No. 2 are annexed and marked as Exhibit "A".

7. These dates are inconsistent with the filing of these proceedings. All the dates given are of 2015. The Arbitration Petition, however, was filed by the Comedy Store in February 2013. There is no explanation at all why from February 2013 till October 2015, Horseshoe Entertainment was unable to instruct its Advocates.

8. Then there is a recitation in the Affidavit in Support of the proceedings before the Company Law Board in New Delhi and in proceedings under Section 8. This has nothing at all to do with Mr Justice Dhanuka's order. What Horseshoe Entertainment really seeks in this Notice of Motion not so much recall of Dhanuka J's order but for me to sit in appeal over it. That I will not do under any circumstances.

9. There is not a single ground that would persuade me to grant relief on this Notice of Motion. It is dismissed.

10. Interestingly, before the Arbitral Tribunal, The Comedy Store has filed a statement of claim and Horseshoe Entertainment has filed a Reply. It has filed no Counter Claim. It has also not filed any independent statement of claim of its own.

11. As a result of this order, there remains the question of enforcing compliance with Mr Justice Dhanuka's order.

12. Respondents Nos. 2 and 3 will remain present on the next occasion, i.e., 10th February 2017. It is made clear that if they do not remain present, orders will be passed to compel their presence, including bailable warrant.

13. By that date, I expect that they will file an Affidavit of compliance. All these Respondents will understand that orders of this Court, irrespective of which Bench has passed them, will be enforced, and will be enforced ruthlessly. Our orders are not suggestions or recommendations.

14. List the Arbitration Petition on 10th February 2017.

(G. S. PATEL, J.)