IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COURT RECEIVER'S REPORT NO. 382 OF 2021

IN

ARBITRATION PETITION NO. 263 OF 2003

WITH

INTERIM APPLICATION (L) NO. 2951 OF 2020

CHAMBER SUMMONS NO. 1452 OF 2016

COURT RECEIVER'S REPORT NO. 174 OF 2019

NOTICE OF MOTION NO. 2124 OF 2018

CHAMBER SUMMONS NO. 260 OF 2017

Rajesh M. Khadawala … Applicant

vs.

Vithal Restaurant and Ors. … Respondent

Mr. D. N. Kher, Court Receiver.
Mr. Pankaj R. Thatte for Petitioner No. 1.
Ms. K. C. Nichani i/b. Mr. Amit Sheth and Mr. Kailas Surve for Respondent no. 3.
Mr. Yash Kataria i/b. M/s. Divekar & Co for Respondent nos. 4 to 6.
Mr. Kamlesh R. Suratwala – Claimant No. 3 in person

CORAM : A. K. MENON, J.
DATED : 25th APRIL, 2022

P.C. :

1. This Report seeks directions as to whether the Court Receiver is to be discharged without passing accounts subject to payment of costs, charges and expenses and steps to be taken for appointment of agent since earlier agent passed away on 12th February, 2021. The son of the original agent Mr. Sunil M. Khadawala is now continuing the business in the premises. Royalty is in arrears in a sum of Rs. 41,40,000/- for 36 months. The contention of the present occupant is that on account of the Covid driven pandemic there was no business on account of lock down, so they seek waiver from March, 2020 to October, 2020.

2. It is the contention of the occupant that the firm being a tenant eviction proceedings are pending in the Court of Small Causes and in the difficult business environment that the restaurateurs have faced during the pandemic when the restaurant was open only for few hours in a staggered manner. The turnover has been very low. The restaurant was also required to renew the liquor licence which has been renewed by the occupant at their costs. The plea is therefore to reduce the monthly royalty presently fixed at Rs.1,15,000/-.

3. It is not in dispute that the total of 36 months royalty is in arrears from April, 2019 and that amounts to Rs. 41,40,000/-. It is also a matter of record that this Court must take notice of the fact that there was complete shut down in all activities from March, 2020 and admittedly till October, 2020

restaurants were shut. The other contesting parties did not have any doubt of this fact. Business thereafter started in a staggered manner and presently business is picking up albeit on a smaller scale. It is expected that the business will improve over time. However at this instant Ms. Nichani states it is not possible to pay more than Rs. 90,000/- per month in addition to the fee for the licence which was renewed at the cost of the occupant. A request is thus made to appoint Mr. Sunil Khadawala son of the original agent who is also partner as agent of the Receiver but at a lower royalty.

4. Considering the facts and circumstances I am of the view that the arrears would have to be paid. However, for the period March, 2020 to October, 2020 there can be complete waiver of Royalty given the fact that business of the restaurant was very low. Given the nature of the pandemic it was not at all practical to run the business. Thus without being treated as a precedent in other cases, it would be appropriate to fix royalty at the interregnum for reasonable period to enable the agent to attempt to secure regular business.

5. Petitioner no. 2 is not appearing and respondent no. 2 has not been appearing. Petitioner no. 3 is appearing in person. He has no objection to the aforesaid course of action provided the amounts are brought back to the original levels in due course. As far as other petitioner and respondent nos. 4 to 6 are concerned learned counsel has no objection to the aforesaid course of action provided Royalty is fixed effective from 1st April, 2021. It is stated

that although the award has been published under the 1996 Act (pre amendment) the petition under Section 34 is pending and a stay continues to operate. I am of the view that the Receiver may continue for the interregnum but only till disposal of the appeal and subject to further directions that may be passed.

6. I am informed today by the Court Receiver that a sum of Rs. 10,00,000/- has been deposited with the Court Receiver as directed by this Court on 21st March, 2022. The occupant has therefore shown intention of continuing to act as agent of the Receiver. Given the facts and circumstances in totality it would be appropriate to pass the following order :

(i) By consent royalty for the period March, 2020 till October, 2020 shall stand waived for reasons stated above.

(ii) Subject to compliance with the following Sunil Khadawala is appointed agent of the Court Receiver on the usual terms except to modify royalty as set out in this order.

> (a) Royalty for the period April, 2019 to March, 2020 amounts to Rs.12,65,000/-. A sum of Rs. 10,00,000/- has already been paid that will be credited and the balance of Rs.2,65,000/- shall be deposited with the Court Receiver not later than 8th June, 2022.
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> (b) From November, 2020 to March, 2021 Royalty will be paid @ Rs.90,000/- per month. Let the arrears at the rate of Rs.90,000/-

per month be paid not later than 15th July, 2022. However from April, 2021 and till March, 2023 royalty will be paid @ Rs.1,00,000/- per month.

(c) In addition the occupant shall also bear costs of the liquor licence, if any, provided the same is renewed as his option and all other charges that are incurred. Subject to payment as aforesaid an agency agreement reflecting the above terms shall be executed on 30th April, 2022.

(iii) Receiver shall meanwhile pay warehouse charges in terms of prayer clause (e) and shall also pay fees of the Advocate appearing in the Small Cause Court from the Suit Account as per prayer clause (g).

(iv) As far as prayer clause (h) is concerned no directions are required to be passed today since accounts are yet to be made up. The amount of arrears are yet to be collected.

(v) Costs of the report is allowed.

(vi) Report is disposed in the above terms.

(vii) In view of the above order Chamber Summons No. 1452 of 2016 will not survive. The same is disposed.

(viii) Report No. 174 of 2019 is also disposed with liberty to apply after the Arbitration petition is disposed.

(ix) Receiver to file a report on behalf of all the parties in the event of default in complying with any of the above directions or on account of delay in payment.

(A. K. MENON, J.)