

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.04.2022

+ **O.M.P.(I) (COMM.) 302/2021**

**COLDSMITHS RETAIL SERVICES
PRIVATE LIMITED**

..... Petitioner

versus

**NIRULAS CORNER HOUSE PRIVATE
LIMITED & ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Nakul Dewan, Senior Advocate with
Mr Dharendra Negi, Mr Sidharth Sethi,
Mr Rohan Naik and Mr Avinash Das,
Advocates.

For the Respondents : Mr Mudit Sharma, Ms Nandini Sharma and
Mr Ajay Pratap Singh, Advocates.

AND

+ **O.M.P.(I) (COMM.) 314/2021**

**NIRULAS CORNER HOUSE PRIVATE
LIMITED**

..... Petitioner

versus

**COLDSMITHS RETAIL SERVICES PRIVATE
LIMITED**

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Mudit Sharma, Ms Nandini
Sharma and Mr Ajay Pratap Singh,
Advocates.

For the Respondent : Mr Nakul Dewan, Senior Advocate with

Mr Dharendra Negi, Mr Sidharth Sethi,
Mr Rohan Naik and Mr Avinash Das,
Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These are petitions filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') seeking interim measures of protection.
2. The disputes between the parties arise in relation with the Business Transfer Agreement dated 21.12.2017 (hereafter the '**Business Transfer Agreement**'); Deed of Assignment dated 04.01.2018 (hereafter the '**Deed of Assignment**'); and, other Agreements (hereafter collectively referred to as '**Transaction Documents**').
3. The Business Transfer Agreement was executed between Coldsmiths Retail Services Private Limited (hereafter '**Coldsmiths**'), Nirulas Corner House Private Limited (hereafter '**Nirulas**') and certain individuals/entities mentioned in Schedule I to the Business Transfer Agreement (referred to as "Promoters" in the Business Transfer Agreement). In terms of the Business Transfer Agreement, Nirulas transferred certain business (referred to as "Transferred Business" in the Business Transfer Agreement) including all assets and liabilities relating thereto, to Coldsmiths.

4. Nirulas and Coldsmiths also entered into the Deed of Assignment, whereby Nirulas assigned its Intellectual Property Rights related to the business transferred by it to Coldsmiths in terms of the Business Transfer Agreement. The same included Trademarks as set out in Schedule I to the Deed of Assignment. However, Nirulas retained certain businesses including a Hotel operated under the Trademark “Nirula’s Hotel” and Coldsmiths entered into a Trademark License Agreement dated 03.01.2018 with Nirulas for licensing the said Trademark.

5. Nirulas issued a notice dated 23.07.2021 (hereafter the ‘**Termination Notice**’) under Clause 3.4 of the Business Transfer Agreement. In terms of the said notice, it terminated the Business Transfer Agreement as well as the Deed of Assignment on the ground that Coldsmiths had failed to comply with its payment obligations under the Business Transfer Agreement.

6. The Termination Notice is central to the disputes between the parties. Coldsmiths claim that the Termination Notice is illegal. It has, accordingly, filed the above-captioned application, *inter alia*, praying as under:

- “a) stay the operation of the Termination Notice dated 23 July 2021 issued by the Respondent No. 1;
- b) restrain the Respondents from acting in any manner pursuant to or in furtherance of the Termination Notice dated 23 July 2021;

- c) restrain the Respondents from claiming or holding out as the owner of the intellectual property assigned to the Petitioner under the Deed of Assignment;
- d) restrain the Respondents from diminishing the value or affecting in any manner the mark "Nirulas" which it has been permitted to use under the Trademark Licence Agreement dated 4 January 2018;
- e) direct the Respondents to forthwith company with the requirement under the Licence Agreement and attribute ownership to the Petitioner pertaining to the Licensed Mark;
- f). Pass ex-parte and ad-interim reliefs in terms of prayers (a) to (e) above; and
- (g) Pass such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case”

7. Nirulas, on the other hand, contends that after termination of the Business Transfer Agreement, it is entitled to the Business/Assets transferred under the Business Transfer Agreement and/or Deed of Assignment. Nirulas has filed a petition, *inter alia*, praying as under:

- “i. restrain the Respondent, their directors, partners, principal officers, servants, agents and representatives etc from directly or indirectly making use of Trademarks/marks set out in Schedule-5 of the Business Transfer Agreement dated 21 December 2017;
- ii. restrain the Respondent, their directors, partners, principal officers, servants, agents and representatives etc from directly or indirectly offering, advertising and/or in any manner portraying to be associated with the Trademarks/marks set out in Schedule-5 of the

Business Transfer Agreement dated 21 December 2017;

- iii. restrain the Respondent, their directors, partners, principal officers, servants, agents and representatives etc from directly or indirectly alienating and/or creating third party rights of any nature and/or granting any license of the trademarks and marks set out in Schedule-5 of the Business Transfer Agreement dated 21 December 2017 and Schedule-1 of the Deed of Assignment dated 04 January 2018;
- iv. restrain the Respondent, their directors, partners, principal officers, servants, agents and representatives etc from directly or indirectly alienating and/or creating third party rights of any nature on the Assets set out in Schedule-2, Schedule-3, Schedule-5, Schedule-6 and Schedule-7 of the Business Transfer Agreement dated 21 December 2017;
- v. restrain the Respondent from changing and/or registering any change in the Capital Structure of the Respondent Company;
- vi. direct the Respondent to file Affidavit of its Assets giving true and correct disclosure of the Assets held by it, its promoters and its subsidiary companies;
- vii. pass ex-parte and ad interim reliefs in terms of prayer (i) to (vi) above; and
- viii Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

8. Coldsmiths claims that the Termination Notice is illegal as there was no default on its part to comply with the payment obligations. The consideration for the Business Transfer Agreement was agreed as ₹25 crores and out of the said consideration, Coldsmiths paid an amount of

₹23.5 crores. It claims that the balance consideration of ₹1.5 crores (Additional Consideration) was payable after Nirulas changed its corporate name. Since Nirulas has not done so, the liability to pay the Additional Consideration had not arisen.

9. Nirulas disputes the same. It claims that the Additional Consideration was due and payable by Coldsmiths and it had requested for extending the time period for making the payment, which was accepted by Nirulas. However, Coldsmiths had failed and neglected to pay the same even during the extended period. Nirulas claims that it had retained its corporate name solely for the purpose that the factory and other licenses under which Coldsmiths was carrying on the part of the Transferred Business, was in its name. Coldsmiths had leased its manufacturing unit in terms of a Rent Agreement dated 30.04.2018, which required the said license to be maintained. In addition, it is contended on its behalf that once Coldsmiths had sought a concession seeking extension of time, which was granted, the Business Transfer Agreement stood novated to that extent and such payment was not contingent upon Nirulas changing its corporate name prior to receiving the same.

10. As stated above, Nirulas has issued the notice purportedly under Clause 3.4 of the Business Transfer Agreement. Coldsmiths claims that it ignores Clause 3.3 of the Business Transfer Agreement.

11. Before proceeding further, it would be relevant to refer to Clause 3 of the Business Transfer Agreement. The same is reproduced below:

“3. CONSIDERATION

- 3.1 The Purchaser shall pay the Consideration to the Seller, including payment of such part of the Consideration on behalf of the Seller to Deutsche Bank Limited for foreclosing the DB Loans as specified in the DB Letter, for the Transferred Business and as fee towards the non-compete obligations of the Covenantors in Clause 14 of this Agreement, on the Closing Date.
- 3.2 The Purchaser shall pay the Initial Additional Consideration to the Seller on the Initial Payment Date and the Balance Additional Consideration on the Balance Payment Date.
- 3.3 Notwithstanding anything stated hereinabove, the Parties agree that in the event of any default by the Seller in performing its obligations and duties under the Transaction Documents, the Purchaser shall not have any obligation to pay the Additional Consideration or any part thereof to the Seller and the Seller shall have no right to claim the Additional Consideration or any part thereof.
- 3.4 In case the Covenantors have failed to pay the Purchaser in respect of an Indemnity Claim within the time specified in Clause 12 of this Agreement or any indemnity claim under any other Transaction Documents, then the Additional Consideration shall be adjusted to the extent of such indemnity claim and the Seller shall have no right to claim such amount of the Additional Consideration. Save as otherwise provided in this Agreement, in case the Purchaser commits any default in the payment of the Additional Consideration, the

Seller shall have the right, by way of notice in writing, to terminate this Agreement. In case of termination of the Agreement by the Seller in such a case, the Seller shall not be required to refund or repay to the Purchaser the Consideration or any part thereof received by it from the Purchaser.”

12. It is contended on behalf of Coldsmiths that Nirulas had defaulted in performing its obligations as it had not changed its corporate name; and therefore, in terms of Clause 3.3 of the Business Transfer Agreement, Coldsmiths had no obligation to pay the ‘Additional Consideration’. Coldsmiths also relies on Clause 7.5.1 of the Business Transfer Agreement and, on the strength of the said clause, contends that the obligation to pay the Additional Consideration was contingent upon Nirulas complying with the ‘Post Closing Actions’ as set out in Schedule 10 to the Business Transfer Agreement.

13. Clause 7.5 of the Business Transfer Agreement and Schedule 10 to the Business Transfer Agreement are relevant and set out below:

“7.5 Additional Consideration

7.5.1 Subject to the terms of Clause 3.2, Clause 3.3 and Clause 3.4 of this Agreement, and subject to fulfillment of the post – Closing Actions (as applicable) set out in **Schedule 10** to the satisfaction of the Purchaser, the Purchaser shall pay the Initial Additional Consideration to the Seller on the Initial Payment Date and the Balance Additional Consideration on the Balance Payment Date.

XXXX

XXXX

XXXX

“SCHEDULE 10

POST CLOSING ACTIONS

1. The Seller shall change its corporate name on or before 31st March, 2019 such that it does not use the word ‘Nirulas’, or any word or combination of words which are identical or confusingly similar or closely resembling the word ‘Nirulas’, and cease using any of the Trademarks in its brochures, stationery etc., in accordance with the terms and conditions set out in the License Agreement.”

14. Undeniably, Nirulas was obliged to change its corporate name. As noticed above, it is Nirulas case that it was always ready and willing to do so but had refrained from taking any steps in this regard, since the necessary licenses were in its name and Coldsmiths would be unable to carry out the manufacturing activity at the premises leased by it from Nirulas, if Nirulas changed its corporate name.

15. It is also contended that Coldsmiths had sought for extension of time to pay the Additional Consideration and the same was accepted, however, it had failed to pay the said amount even during the extended period. This was not subject to prior compliance of the Post Closing Actions (as set out in Schedule 10 to the Business Transfer Agreement) and therefore, Coldsmiths had defaulted in complying with its payment obligations, which entitled Nirulas to terminate the Business Transfer Agreement.

16. The learned counsel for the parties have relied upon certain emails exchanged between the parties, in support of their respective

contentions. It is relevant to refer to the said exchange of e-mails.

17. On 04.10.2020, Mr. Amit Chadha of Coldsmiths sent the following email to Mr. Sumant Bhargava of Nirulas: -

“From: Amit chadha <amit.chadha@nirulashotel.com>
Date: 4 October 2020 at 11:48:30 AM IST
To: sumant@doundo.org, sumant@nirulas.com
Subject: Extension of name change until 30th dec 2020

Hi Sumant,

As discussed we have already initiated the process but are waiting for renewal of factory licence operated by you. As both fire and pollution licences are in name of Nchpl which may be required for renewal of factory license we may have to wait for the process till 30th dec2020. So we would request you to extend the name change till 30 th dec.

Thanx and regards
Amit Chadha

Sent from my iPhone”

18. By a subsequent email, Mr Amit Chadha also sought confirmation for proceeding for renewal of the license. The same was confirmed by Mr Sumant Bhargava on the same day. Thereafter, on 18.12.2020, Mr Amit Chadha sent another email seeking waiver of the stipulation to change the corporate name of Nirulas until the factory is operational. The said email is set out below:

On Fri, Dec 18, 2020 at 12:45 PM Amit Chadha
<amit.chadha@nirulashotel.com> wrote:

Hi sumant,

We would like to request a waiver for name change of our company until the factory is operational as you are aware that all licensee both of (pollution and fire) are in name of nchpl. If the name is changed we may have to fresh apply both our licenses which may not be possible as due to use of steam boiler and generator are not allowed in Delhi and NCR fresh notice by NGT. Please advice the same.

Thanx and regards

Amit chadha”

19. In response to the aforesaid email, Mr Sumant Bhargava of Coldsmiths sent an email extending the period to 31.03.2021, in order to effect change in the corporate name. The said e-mail reads as under:

“From: **Sumant Bhargava** <sumant@nirulas.com>
Date: Thu, 31 Dec, 2020, 6:23 pm
Subject: Re: FW: Extension of name change until 30th dec 2020
To: Amit Chadha <amit.chadha@nirulashotel.com>
Cc: Sumant Bhargava <sumant@doundo.org>, <chadha@kafilatravel.com>, Biresh Kumar <biresh.kumar@nirulashotel.com>

Dear Amit, as discussed, we will extend the timeline to effect the name change to March 31 2021

Regards
Sumant”

20. It is contended on behalf of Nirulas that Coldsmiths did not

secure the requisite license under its name and therefore, Nirulas was constrained to defer taking steps for changing its corporate name. In this regard, Nirulas had sent an email dated 24.03.2021, which is set out below:

From: Amit Chadha [mailto:amit.chadha@nirulahotel.com]
Sent: Wednesday, March 24, 2021 7:01 PM
To: 'sumant@nirulas.com'
Subject: extention of name change

Hi sumant,

As per your mail we were suppose to change our Name before 31.03.2021. As discussed all the Licenses are in our name i.e. "Nirulas Corner House Pvt. Ltd." name change will also lead to expire of all license (fire, factory license and pollution) and it will be difficult to run the factory in our premises without these Licenses.

So we here by suggest to continue with the same Name un till you are running your factory in Our Premises and can be changed before vacating of the factory
To save any legal and administrative complications.

Thanx and regards
Amit chadha”

“सत्यमेव जयते”

21. It does not appear that Coldsmiths responded to the said e-mail. In any view, the response to the said email, if any, has not been placed on record. However, it is contended on behalf of Nirulas that there was no objection raised by Coldsmiths for Nirulas to continue retaining its corporate name since the necessary licenses were in the name of Nirulas and Coldsmiths had not secured the fire, factory license and pollution

license in its name.

22. Nirulas also relied on a subsequent email dated 24.06.2021, which reads as under:

“From: Amit Chadha [mailto:chadha@nirulahotel.com]
Sent: Thursday, June 24, 2021 1:07 PM
To: ‘sumant@nirulas.com’
Cc: ‘smant@doundo.org’
Subject: RE: extention of name change

Hi Sumant,

In continuation to our previous mail, we wish to change our companies name (ie NCHPL) to new name which would lead to expire or cancellation of existing licenses with immediate effect which are been used by you for the operation of factory.

We are still waiting for your new licenses with drawings to be submitted to fire dept with approval from Noida authority please confirm us with the date when can we receive them so that we can file our new name with ROC.

Thanx and regards

Amit chadha”

23. Admittedly, there is no communication issued by Coldsmiths calling upon Nirulas to change its corporate name or issuing any notice alleging default on the part of Nirulas to comply with its obligations under Schedule 10 to the Business Transfer Agreement. There is no document on record, which even remotely suggests that Coldsmiths had raised any objection or alleged any breach of the obligations on the part

of Nirulas, at the material time.

24. The email dated 24.06.2021 sent by Nirulas clearly suggests that Nirulas was ready and willing to change its corporate name.

25. It is also contended of behalf of Nirulas that it does not carry on business similar to that as transferred to Coldsmiths. It was continuing to operate a hotel under the name “Nirulas Hotel”, which was permissible. It is also contended that the premises leased by Nirulas to Coldsmiths from where Coldsmiths was carrying on certain activities as a part of the Transferred Business, was the part of the same building from where Nirulas was running a hotel in the name of Nirulas Hotel. Thus, Nirulas had no further use of retaining its corporate name and the necessary steps to change the corporate name was deferred only for facilitating Coldsmiths to uninterruptedly carry out its activities from the premises leased to it.

26. It does, *prima facie*, appear from the email dated 24.06.2021 that Nirulas was waiting for Coldsmiths to obtain a license in order to proceed further with changing its corporate name.

27. Whilst, the parties had exchanged emails regarding change of the corporate name of Nirulas, the parties were also simultaneously in discussions regarding Coldsmiths obligations to pay the Additional Consideration.

28. On 04.10.2020, Mr Sumant Bhargava of Coldsmiths had sent an email to Mr. Amit Chadha of Nirulas requesting that the time for

making the balance payment be extended till 30.06.2021. It is relevant to refer to the said email. The same reads as under:

From: Sumant Bhargava [mailto:sumant@nirulas.com]
Sent: Sunday, October 04, 2020 11:51 AM
To: Amit chadha; chadha@kafilatravel.com
Subject: Request to defer Balance Additional Consideration

Dear Mr Chadha and Amit

Trust this email finds you and your family well.

The last 6 months have witnessed unprecedented times and while the economic environment has started to improve since the world's strictest lockdown in March this year, the uncertainty around business revival remains. Given the uncertainty and measure of the lockdowns and the continued threat from COVID19, we don't have visibility of how and when the economy will respond in the immediate and recent future. Companies across industries are experiencing and responding to varying degrees of financial challenges; from airline to hospitality to retail and financial services, all sectors are witnessing not only difficult times but are unsure of their business in the near future and have undertaken drastic measures to stay in business.

We, as a company, with cooperation from partners like you have continued our business through the lockdowns and this pandemic, but the losses incurred in the first quarter have had a lasting effect on our business and the company. We have also taken drastic and some tough decisions like layoffs, salary cuts and shutting down of our stores.

Given the softness and unpredictability of revenues, and further to our recent discussions, we do not have a choice but to request to you to please defer till June 30, 2021, the 'Balance Additional Consideration' payable on the 'Balance Payment Date' as mentioned in the Business Transfer Agreement dated December 21, 2017 signed between us.

Looking forward to your cooperation in this regard

Regards

Sumant"

29. It is important to note that by a separate email of the said date, Amit Chadha of Nirulas had informed Mr Sumant Bhargava of Coldsmiths that Nirulas had initiated the process but was awaiting renewal of the factory license operated by Coldsmiths and thus, requested for extending the time for changing the name till 30.12.2020. The said email was sent at 11:48 AM and the email sent by Mr Sumant Bhargava requesting for modifying the Balance Payment Date to 30.06.2021 was sent at 11:51 AM. It is material to note that the email requesting for extending the Balance Payment Date has no mention of the obligations on the part of Nirulas to change its corporate name. A plain reading of the said email dated 04.10.2020 sent by Mr Sumant Bhargava to Mr Amit Chadha indicates that Coldsmiths had requested for extension of time due to financial constraints resulting from the outbreak of Covid-19.

30. It is apparent that there were certain discussions between the parties and on 23.11.2020, Mr Sumant Bhargava of Coldsmiths sent an

email confirming that it would pay a sum of ₹1 crore on or before 31.03.2021 and ₹1.5 crores on or before 30.06.2021. The said email reads as under:

“From: Sumant Bhargava [mailto:sumant@nirulas.com]
Sent: Monday, November 23, 2020 6:16 PM
To: Amit chadha; chadha@kafilatravel.com
Cc: Meeta Makhan; Sumant Bhargava
Subject: Re: Request to defer Balance Additional Consideration

Dear Amit

As discussed and shared with you, we would defer the payment as follows:

Rs 100,00,000 (One Crore) of the Balance Additional Consideration to be paid on or before March 31, 2021

Rs 150,00,000 (One Crore Fifty Lakhs) of the Balance Additional Consideration on or before June 30, 2021

Request you to please confirm the above

Thank you once again for your cooperation

Regards

Sumant”

31. On 18.12.2020, Mr Amit Chadha of Nirulas sent an email stating that Nirulas was also in urgent need of funds and requested that the amount of ₹1 crore be released on or before 31.01.2021 and the remaining ₹1.5 crores be released on or before 30.06.2021.

32. None of these two emails make any mention that such payments were conditional upon change of the corporate name.

33. On 31.12.2020, the parties entered into a letter agreement (hereafter '**the Letter Agreement**'). The Letter Agreement reads as under:

“December 31, 2020

Mr. Amit Chadha
Nirulas Corner House Private Limited
10185C Arya Samaj Road New Delhi 110005
Karol Bagh
New Delhi 110005

Ref: Business Transfer Agreement dated December 21, 2017

Dear Amit

This is with reference to the Business Transfer Agreement dated December 21, 2017 and the Balance Additional Consideration payable therein. As discussed and mutually agreed, the Balance Additional Consideration of Rs 2,50,00,000 (Rupees Two Crore Fifty Lakhs Only) which is due to be paid to Nirulas Corner House Private Limited on January 4th, 2021 shall now be paid as under:

Rs 1,00,00,000 (Rupees One Crore Only) to be paid on January 30th, 2021

Rs 1,50,00,000 (Rupees One Crore Fifty Lakhs Only) to be paid on June 30th, 2021

Please sign this letter as a confirmation of your acceptance of the above.

Thanking you for your cooperation
For Coldsmiths Retail
Services Private
Limited

For Nirulas
Corner House
Private Limited

Sumant Bhargava

Amit Chadha”

34. Coldsmiths paid a sum of ₹1 crore to Nirulas on 30.01.2021 without any reservation that Nirulas had not changed its corporate name. However, it failed to make the balance payment of ₹1.5 crores. Indisputably, Nirulas was pursuing Coldsmiths for the payment of the balance amount. On 30.06.2021, one Mr Abhishek G. Poddar of Coldsmiths sent an email to Mr Amit Chadha of Nirulas in regard to the outstanding payments under the Business Transfer Agreement. The said email is set out below:

“From: Abhishek G Poddar
[mailto:abhishek@banyantreefinance.com]
Sent: Wednesday, June 30, 2021 1:48 PM
To: ‘Amit Chadha’
Cc: sanjiv@banyantreefinance.com; Ashish Agarwal
Subject: Delhi meeting

Dear Amit,

Hope you are doing well.

As per your discussions with Sanjiv, we writing to you to confirm that we are available for a meeting in Delhi to discuss all points.

As you are aware there has been a change in guard in the Company, given the second wave impact, etc. we will

need to discuss the quick resolution of outstanding payments under BTA and other points. Please let us know any date convenient to you after 9th July.

Many thanks.

Stay safe and best regards,
Abhishek”

35. The above e-mail did not mention any issue regarding change in the corporate name or that Coldsmiths was withholding the balance payment awaiting change in the corporate name.

36. *Prima facie*, the contention advanced on behalf of Nirulas that there was no dispute or controversy regarding change in the corporate name, appears merited. There is extensive correspondence exchanged between the parties regarding deferment of payment of the balance consideration. The parties had also entered into the Letter Agreement extending the time for making the payment of ₹1 crore to 30.01.2021 and the remaining ₹1.5 crore of the Balance Additional Consideration to 30.06.2021. As noted above, the first tranche of ₹1 crore was paid without reservation or any protest in regard to Nirulas not having changed its corporate name. There is no correspondence on record that suggests that Coldsmiths was concerned regarding non-change of the corporate name by Nirulas. The emails sent by Nirulas clearly indicate that it was willing to change its corporate name but that would adversely affect Coldsmiths carrying on its activity from the leased premises. As late as on 24.06.2021, Nirulas had informed Coldsmiths that it was “*still waiting for your new licenses with drawings to be submitted to fire dept*

with approval from Noida”.

37. There is no communication from Coldsmiths calling upon Nirulas to change its corporate name, notwithstanding the issue regarding the licenses, which was flagged by Nirulas. There is no communication on record expressing any concern regarding delay on the part of Nirulas to change its corporate name.

38. It is also relevant to note that the email dated 30.06.2021 sent by Coldsmiths also does not mention that it had withheld making the payments on account of failure on the part of Nirulas from changing its corporate name. On the contrary, it only refers to the impact of the second wave and the change in guard in the company. It appears that it merely wanted to discuss the issue of further payments, in view of the impact of the second wave and the surge in cases on account of Covid-19.

39. Mr Dewan, learned senior counsel appearing for Coldsmiths, contended that Coldsmiths had not given its right under the Business Transfer Agreement and the emails exchanged between the parties regarding change in the corporate name, exchanged almost simultaneously with the emails regarding deferment of payment, also establishes the same. He earnestly contended that Nirulas had sought a waiver for changing its corporate name, but Coldsmiths had not accepted the same. It had merely extended the time for Nirulas to do so till 31.03.2021. He submitted that there was thus, no obligation on the part of Coldsmiths to make any further payments under the Business

Transfer Agreement.

40. He also contended that Nirulas has failed to make out any *prima facie* case for seeking any interim relief. Coldsmiths had paid a substantial consideration of ₹23.5 crores out of a total consideration of ₹25 crores (being 94% of the sale consideration). It had also deposited the balance ₹1.5 crores with the Registry of this Court, in terms of the order dated 16.09.2021 passed by this Court in OMP(I) 314/2021. Thus, the petition filed by Nirulas is liable to be rejected.

41. Mr Sharma, learned counsel appearing for Nirulas, had countered the aforesaid submissions. He submitted that Coldsmiths had been repeatedly seeking extension of time for making the payment. Further, it had defaulted in making the payment for ₹1.5 crores by 30.06.2021 and, once again, wanted to renegotiate the terms of the said payment as is evident from the email dated 30.06.2021.

42. The contentions advanced by Mr Dewan, are unpersuasive. This Court is unable to accept that the Termination Notice is, *ex facie*, illegal. It appears that the issue regarding the change of corporate name is an afterthought and was raised for the first time in the letter dated 16.08.2021 issued by Coldsmiths, through its advocates. *Prima facie*, the contention that Nirulas had deferred changing its corporate name in order to sustain its licenses (fire, pollution and factory license) under which Coldsmiths was carrying on its activities, is merited. This was clearly brought out in the emails sent by Nirulas at the material time. There is no communication controverting the said reasoning.

43. *Prima facie*, the contention that the Business Transfer Agreement was novated by the Letter Agreement and the payment of Additional Consideration was not contingent upon Nirulas changing its corporate name, is merited. A plain reading of the Letter Agreement clearly indicates that Coldsmiths had agreed that the amount of ₹2.5 crores would be paid in the manner as stated therein, without referring to any other conditions. Undeniably, Nirulas was obliged to change its corporate name. However, it does not appear that the said obligation was retained as a pre-condition for making the payment of the balance consideration. There is good reason for the same as it is apparent that the change in the corporate name had been held up on account of delay in securing the requisite licenses for Coldsmiths to carry out the manufacturing activities in its own name. The fact that Coldsmiths had made a payment of ₹1 crore on 30.01.2021, without any reservation in this regard, also supports this view.

44. The disputes between the parties are required to be adjudicated by the Arbitral Tribunal. Considering that Coldsmiths has paid substantial portion of the consideration, this Court does not consider it apposite to accede to the interim prayers for interdicting Coldsmiths from carrying on the Transferred Business or for using the Trademarks assigned to it. However, it is necessary to ensure that the subject matter of the disputes is preserved.

45. In this view, Coldsmiths is restrained from selling, transferring, encumbering or in any manner alienating any of the assets including the Intellectual Property Rights acquired by it pursuant to the Business

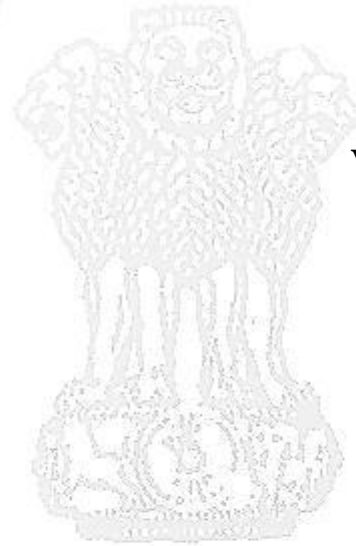
Transfer Agreement and the Deed of Assignment, till the conclusion of the arbitral proceedings.

46. Accordingly, OMP(I)(COMM.) 314/2021 is partly allowed in the aforesaid terms.

47. For the reasons stated above, this Court is unable to accede to any of the reliefs sought by Coldsmiths in its petition. Accordingly, OMP(I)(COMM.) 302/2021, is dismissed.

APRIL 04, 2022
RK/pkv

VIBHU BAKHRU, J



भारतमेव जयते