

IN THE MATTER OF the Sale and Supply of Alcohol  
Act 2012

AND

IN THE MATTER OF an application by  
PREET PVT LTD for renewal of an  
Off Licence pursuant to s99 of the  
Act in respect of premises known as  
Warrington Liquor Store situated at  
64 Warrington Street, Christchurch.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson Mr R.J.Wilson JP  
Members Mr D.L.Blackwell OSM  
Mr P.Buttell

HEARING at Christchurch Monday 12<sup>th</sup> October 2015

PRESENT Mr P. Egden for the applicant, Preet PVT Ltd  
Mrs Pallavi Kaur Bal, applicant  
Mr A.Dumbleton for the objector, Ministry of Business, Innovation  
and Employment  
Ms J. Davison, Alcohol Licensing Inspector, Christchurch City Council  
Senior Constable G.Kyne, NZ Police  
Ms H.Braithwaite, representing the Medical Officer of Health  
Ms J.Borsboom, Senior Labour Inspector, objector  
Mr Jaspal Singh, witness for objector  
Mr Harbaldeep Singh, witness for objector

INTRODUCTION

- (1) This is an application by Preet PVT Ltd for renewal of an Off Licence for premises known as Warrington Liquor Store situated at 64 Warrington Street, Christchurch. The application is opposed by the Inspector and the NZ Police on the grounds of suitability. There is a public objector, a Senior Labour Inspector of the Ministry of Business Innovation and Employment. She also objects on the grounds of suitability. The Committee accepts that the objector meets the requirements of s102(1).
- (2) In his opening remarks Mr Egden for the applicant, expressed concern that the evidence from the objector amounted to establishing that in 2013 the Company

employed staff who had complained to the Labour Inspector that they were underpaid. Mr Dilbag Singh Bal (aka Sunny Bal) was a Director of the Company at the time and subsequently faced proceedings before the Employment Relations Authority. Charges are also pending before the District Court with respect to certain alleged breaches of the Immigration Act. Mr Egden said that although Mrs Pallavi Kaur Bal (aka Tina Bal) was also a Director of the company she was not aware of these breaches until further down the track. She has not been charged with any offending and he was concerned that any evidence she might give in these proceedings might be used against her in a prosecution. He therefore asked that any evidence produced by the Labour Inspectorate be dealt with on the basis of allegations which are denied but unproven.

- (3) The Chairman said that the Committee also had concerns about evidence being given about Mr Dilbag Singh Bal to his detriment when he was not a party to the proceedings and not present to respond. He noted the provisions of s.203 allowing the Committee to hear such evidence in private or make an order prohibiting its publication.
- (4) Mr Dumbleton for the objector responded that the point of the objection was that what happened at the Warrington Liquor Store at various times is relevant to the suitability of the applicant, that is Tina Bal and her ability to comply with the law. Mr Dumbleton informed the Committee that proceedings had been brought against Preet PVT Ltd and its Director Sunny Bal, alleging failures under the Minimum Wage Act and the Holidays Act. The parties went to mediation with the outcome that a judgement was entered against the company and Sunny Bal for the payment of approximately \$73,000. This is being complied with and payments made. The matter of penalties has not been settled and is still before the Authority. Liability is not disputed but the quantum of any penalty is on the basis that the Company does not have the means to pay.
- (5) The Chairman said that the objector's witnesses would be heard and the Committee would decide in its deliberations what weight to give to them. Mr Egden asked that witnesses to be called by the objector should wait outside and then be excluded after giving evidence. This was agreed.

#### EVIDENCE OF PALLAVI KAUR BAL

- (6) A brief of evidence was produced. The substance of Mrs Bal's evidence was that she did not have an active role in the management of the businesses which include Warrington Liquor Store during the period her husband Sunny Bal failed to pay the employees correctly. She said she had two small children, the second born by Caesarian section in 2012. She was preoccupied with child care and other domestic responsibilities in that time. Her only involvement had been to visit the premises occasionally to satisfy herself that stock was displayed properly and that they were clean and tidy. She had attempted a little administration but had not been able to do it. She considered that she could best make a contribution at this time by taking care

- of domestic matters thus freeing up her husband to look after the businesses. In any event he was a confident man, somewhat dominating, and did not involve her in what he was doing. Nevertheless she trusted him.
- (7) After she discovered he was having an affair with an employee the marriage failed. There is no possibility of a reconciliation. As part of the settlement between her husband and herself she had taken over a number of businesses which she had a hand in establishing. Warrington Liquor Store was one. Because she did not have the confidence to manage the businesses on her own at that time and needed help, she employed her husband to assist. He was paid \$2200 a fortnight for this. As she grew more confident she needed him less and by February 2015 she was managing by herself. Sunny Bal ceased to be a Director of Preet PVT Ltd in March 2015. Recently he has been employed solely as a Duty Manager doing a few hours a week when she had a gap in her Duty Managers' roster. Mrs Bal confirmed that she paid the eight managers who worked in the three liquor stores she now owned. All were paid at or over the minimum wage and got their holidays. There were no visa issues.
- (8) Under cross-examination Mrs Bal confirmed that Sunny Bal would not be involved in the business in the future. His only role at present was as an occasional Duty Manager but she intended to cease even this arrangement just as soon as she had obtained a replacement. She repeated that she had very little involvement with the business at the time of the employment breaches being preoccupied with her son. She was unaware that tax was not being forwarded to IRD with respect to one employee. She did not file tax returns. She was not responsible for recording hours of work or doing the PAYE. All this was Sunny's job. She did not open emails sent to her email address and she denied asking employees to delete certain emails.
- (9) With reference to the proceedings before the Employment Relations Authority and in particular to the affidavit filed on 9<sup>th</sup> October 2015 where Sunny said that he was still managing the business and paying the employees, Mrs Bal said this was not true. She managed the business and she is paying the employees.

#### EVIDENCE FOR THE OBJECTOR

- (10) Briefs of evidence were provided by Jeanie Borsboom, Senior Labour Inspector and by Jaspal Singh and Harbaldeep Singh. The tenor of this evidence was that Sunny Bal while a Director of Preet PVT Ltd had been underpaying his workers. Evidence was given that they had employment agreements that they were to be paid \$17 per hour but had actually only received \$8-50 per hour. There were also irregularities with respect to holidays. Sunny Bal was difficult to deal with and eventually some employees had contacted the Labour Inspectorate. As a result there was a consent determination by the Employment Relations Authority for a total of \$73,000 of which \$39,000 directly related to Preet PVT Ltd. Penalties have yet to be assessed.
- (11) Ms Borsboom said she had lodged an objection because it was clear that both Sunny and Tina operated their businesses with no regard for minimum standards. She had interviewed five employees who were credible. Documentation corroborated their evidence and they were consistent with each other. Both

- Harbaldeep Singh and Jaspal Singh gave evidence that Tina Bal was involved and had tried to cover up. In Ms Borsboom's view Tina Bal was not suitable to hold a licence.
- (12) In cross examination Mr Egden objected to the previous line of questioning. He said the witness was only giving her opinion and this should be disregarded. He put it to Ms Borsboom that there was no corroborative evidence that Tina Bal was involved in a cover-up. The evidence that Tina Bal knew of the hours the staff were working depended on her receiving the emails. To the Inspector, Ms Borsboom said that her concerns were that there were no employment records, the employees paid themselves from the till and worked out the tax by calculator. She thought this was unwise.

### EVIDENCE OF THE INSPECTOR

- (13) Ms Davison's evidence was taken as read. Under cross-examination Ms Davison admitted that at the time she had written her report her concern was the continued involvement of Sunny Bal in the business. She first saw the Senior Labour Inspector's evidence about two weeks ago and it became apparent to her that Tina Bal had some involvement in the employment relationship. Notwithstanding that she agreed that for five or six years there had not been a problem with the Warrington Liquor Store, apart from the one failed controlled purchase operation three years ago. She agreed that the store appeared to be conducted in a responsible manner.

### SUBMISSIONS

- (14) Written submissions were provided by the objector, the Inspector and Medical Officer of Health and the applicant. The objector's submission was in essence that Sunny Bal continued to be involved and this is likely to be adverse to the proper conduct of the business. The Inspector/Medical Officer of Health considered that Tina Bal was tainted by the actions of Preet PVT Ltd while she was a Director and shareholder. An attempt to place culpability on Sunny Bal does not override Tina's responsibility as a Director.
- (15) Mr Egden pointed out that this was a renewal and the applicant was entitled to it under the same terms unless there was clear evidence that the applicant did not meet the criteria set out in the Act and that in particular, if granted, the purpose and object of the Act would not be complied with. He asked whether it could be said that if the licence were to be renewed there is a real and substantial risk that the licensee is unlikely to meet its obligations.

### DISCUSSION

- (16) We take as our starting point the Purpose and Object of the Act and note that it is a characteristic of the new system that it is reasonable and its administration helps to achieve the object of the Act. The object of the Act is that the sale, supply and consumption of alcohol should be undertaken safely and responsibly and that the

harm caused by the excessive or inappropriate consumption of alcohol should be minimised. We have had regard to that and to the other criteria set out in s105. There was general agreement among the parties that the only significant issue for the Committee to consider was the suitability of the applicant as required by s105 (1) (b). The Committee has considered all the matters we are required to take into account under s105 but agree that it is the issue of suitability on which the success or otherwise of this application turns. As Counsel for the applicant has pointed out this is an application for a renewal and there needs to be clear and strong evidence that the applicant is unsuitable before we would fail to grant it.

- (17) In our view the concerns raised by the Agencies and the objector can be divided into two aspects. Firstly is Dilbag Singh Bal, known as Sunny, still involved in running the business? If so then we are agreed that there are serious questions as to the suitability of the applicant. Failure to meet his legal obligations in one area must surely be an indication that he is likely to fail to do so in another. Secondly if Sunny Bal is no longer involved with the business, is the present sole Director Pallavi Kaur Bal, known as Tina, so tainted by her association with him that she too is unsuitable?
- (18) With respect to the first matter of whether Sunny Bal is still involved in running the business our view that he is not. While we heard evidence from the objector and her witnesses that suggested there might be an ongoing involvement this was by no means conclusive. We also place little reliance on the affidavit filed with the Employment Relations Authority in which Sunny Bal says that he is still managing the Warrington Liquor Store among others and paying its employees. We would have been helped by the presence of Sunny Bal himself so we could have had clarified what he actually meant by his statement which we think is capable of more than one interpretation. However he did not front to give evidence so we can accord his statement only limited weight. We are also mindful that he has shown himself to be untruthful in the past in his dealing with authorities and his staff. Just because he says something is so now should we believe him?
- (19) For her part Tina Bal has given evidence to the effect that Sunny Bal's involvement in the business has been reducing throughout 2015 and at this time is limited to occasional shifts as Duty Manager. Subsequent to the hearing the applicant has provided us with a written undertaking that Sunny Bal has no management role in the business and that if the licence is renewed he would not be employed in any capacity paid or unpaid.
- (20) We are left therefore to consider whether the applicant Preet PVT Ltd is unsuitable because of the character of its sole Director and shareholder, Pallavi Kaur Bal. We acknowledge at the outset that as a Director of the company at the time of the breaches of employment requirements she should have been aware what was going on and certainly bears some responsibility for what occurred. We note however that her family circumstances at the time prevented active involvement. We heard evidence that Sunny Bal was a domineering husband who did not seek to share his business decisions or seek advice from his wife. This view of him is consistent with the impression we have gained from other witnesses. On balance we are prepared to accept that she was unaware of the extent of the breaches until

much later on. She said she trusted her husband as she was entitled to do. We heard no evidence that persuaded us that she was not a suitable person now. There is no suggestion that the Warrington Liquor Store has not been run properly with respect to compliance with The Sale and Supply of Alcohol Act 2012 and that is our focus. To the contrary the store seems to be perfectly well run and no current concerns have been brought to our attention.

## DECISION

(21) We are satisfied as to the matters to which we must have regard as set out in s105. The Committee's decision is that application of Preet PVT Ltd for renewal of an Off Licence with respect to the premises known as Warrington Liquor Store situated at 64 Warrington Street, Christchurch is granted for a period of three years. The licence may issue on payment of the annual fee payable in accordance with Regulation 15 of the Sale and Supply of Alcohol (Fees) Regulations. The applicant is reminded that it must comply strictly with the undertaking given regarding the employment of Dilbag Singh Bal.

The licence will be subject to the following Conditions:

### Compulsory Conditions

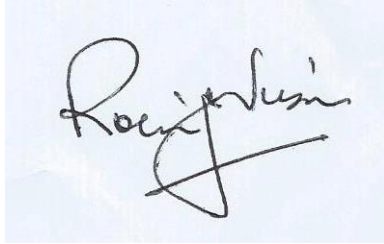
- (a) No alcohol is to be sold or delivered on Good Friday, Easter Sunday, Christmas Day or before 1 pm on Anzac Day.
- (b) Alcohol may only be sold or delivered on the following days and during the following hours:
  - Monday to Sunday 10 am to 11 pm
- (c) Water must be freely available to customers while alcohol is being supplied free as a sample on the premises.

### Discretionary Conditions

- (a) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
  - Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the sale of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (b) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises are observed:
  - Alcohol must only be sold and supplied on the premises in accordance with the premises plan submitted with the application.
- (c) The whole of the premises is designated a supervised area.

Other restrictions and requirements to be noted on the licence  
s56 Display of signs  
s57 Display of licences  
s59 Requirements relating to remote sales by holders of Off Licences  
s214 Manager to be on duty at all times and responsible for compliance

DATED at Christchurch this 16<sup>th</sup> day of November 2015

A handwritten signature in black ink on a light blue background. The signature is cursive and appears to read 'R.J. Wilson'.

R.J. Wilson  
Chairperson  
Christchurch District Licensing Committee