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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P.(I) (COMM.) 353/2021&I.A. 14193/2021

VIDYA MANDIR CLASSES LIMITED Petitioner

Through: Mr. Achint Singh Gyani, Adv.

versus

HARSH TIWARY Respondent

Through: Mr. Sumeet Gadodia, Mr.
Kaushik Poddar & Mr. Rajiv
Dalal, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

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01.12.2021

1. Given the urgency of the matter, short notice had been issued in this petition.
2. Pleadings in this petition had been completed and learned Counsel for the parties have also filed written submissions. They have also been heard at length. Given the nature of the controversy, the Court proceeds to dispose of the matter with the consent of learned Counsel for the parties.
3. This petition, preferred under Section 9 of the Arbitration and Conciliation Act, 1996, ("the 1996 Act"), seeks pre-arbitral interim reliefs.

4. The petitioner provides tutorial and coaching services for students who desire to seek admission to the Indian Institutes of Technology (IITs). The petitioner has been providing these services under the moniker “VIDYAMANDIR CLASSES”.

5. On 29th September, 2017, the petitioner and the respondent entered into a Franchise Agreement, whereunder the petitioner granted a license to the respondent to use the brand name “VIDYAMANDIR CLASSES” of the petitioner, and to make use of its teaching material for providing coaching classes to IIT aspirants. The agreement was to remain in force for a period of five years, i.e. till 28th September, 2022. The entire period was to be treated as a lock-in period.

6. Clauses 2, 6.1.9, 6.1.17, 9.1, 10.4, 14.1, 14.2 and 17 of the agreement read thus:

“2. SCOPE OF AGREEMENT

2.1 Subject to the terms and conditions of this Agreement and in consideration of these presents the Franchisee hereby accepts to run the Center in accordance with the Guidelines and discharge all Franchisee’s Functions in accordance with the this Agreement as required by the Franchisor.

2.2 It is hereby clarified that notwithstanding anything to the contrary contained herein, the Franchisee is not permitted to use the name of the Franchisor and/or the Trade Names / Trade Descriptors for business of the Franchisee or any other entity or other area of business, on the internet/ web/ print or any other media for any purpose which the Franchisee has not specifically been bestowed permission to conduct under this Agreement.

2.3 The non-exclusive license to use the Brand is limited to the period of this Agreement and/ or its earlier determination/ termination as provided hereinafter.

2.4 Franchisee will market the product in local area with the permission and approval of Franchisor and acquire good number of students, they will be responsible for all the operational Cost and expenses to run the Centre and vmc will share the Revenue as mentioned in the Schedule mentioned below.

2.5 Franchisee will be responsible to get all prior permissions from local authority to operate the centre in that vicinity. He will also be responsible for routine operation of the centre and will also ensure that class should be conducted as per pre decided schedule and course should be completed as per schedule shared by VMC.

2.6 Franchisee will be bound by the quality parameters of VMC which may change as required in future and the same will be informed either in writing or Electronic mode.

2.7 Franchisor has assured the Franchisee that whenever VMC will open Physical Centre in the same territory or in any other Territory First Preference will be given to Franchisee.

6.1.9 The Franchisee shall have no claim, lien, right of retention, sale or set-off or other right, title or interest whatsoever in or on any data, books, brochures, booklets, agreements, forms, client list, supplier list, records, reports, statements, slips, files, copies, Schemes, and other such items as may be intimated by the Franchisor to the Franchisee from time to time, (hereinafter collectively referred to as “**Items**”) which come into the Franchisee’s power or possession under, pursuant to or in connection with this Agreement for any reason whatsoever and upon demand by the Franchisor the Franchisee shall forthwith deliver all Items to the Franchisor, retaining only such documents or copies thereof as it may, by law, be required to so retain.

6.1.17 The Franchisee will make sure that fee collected from students should be deposited in VMC designated account within 18 hours.

9.1 In the event of any delay/ default by the Franchisee in the payment of Franchisee Fee / fee collected from students or other payments payable by the Franchisee to the Franchisor, in whole or in part, then without prejudice to other rights and remedies available to the Franchisor under law or equity, including without limitation, the right of the Franchisor to suspend the operation of this Agreement or to forthwith terminate this Agreement as elsewhere provided in this Agreement, the Franchisee shall be liable to pay the Franchisee Fee / other payments to the Franchisor and also will be liable to pay interest on such delayed payments at the rate of 18% per annum for the period beginning on the day the payment becomes due till the date of actual payment (the “**Interest**”).

10.4 Termination for Breach. Notwithstanding any provision to the contrary, the Franchisor may forthwith terminate this Agreement if the Franchisee commits breach (as per the sole discretion of the Franchisor) of any provision(s) of this Agreement or any other document provided pursuant to this Agreement, by providing a 15 (Fifteen) days cure period to remedy such breach. Notwithstanding the foregoing, no cure period will be provided for any breach of the provisions in relation to exclusivity and non-complete, confidentiality, intellectual property and corrupt practices.

14.1 During the terms of this Agreement and after one years from the date of termination, the Franchisee, either on its own behalf or by or through any person, Senior Representative, Affiliate, Personnel, associate, relative, company, manger, agent, distributor, employee, consultant or otherwise in a personal or any capacity, body corporate whether incorporated or not or any firm or sole proprietorship or entity or concern, shall not:

14.1.1 establish, set up, carry on, engage, conduct, consult, advise, operate or otherwise be in any manner associated or concerned or connected with or have any interest in any business or commercial activity or render any service which

directly or indirectly competes with or is detrimental to the interests of the Franchisor or is in any manner similar to the Brand or the Franchisee's Functions hereunder; and

14.1.2 approach, canvass, contract with, solicit or otherwise endeavour to entice away from the Franchisor any of its employees, sales or purchase agents or directors whether or not such person would commit a breach of contract of employment or agency as the case may be provided.

14.2 The Franchisee shall also not manufacture/ print any goods which are in any manner similar to the Products, without the prior written consent of the Franchisor.

Provided that in any event irrespective of the cause of termination of this Agreement, for a period of 12(Twelve) months subsequently to the termination of this Agreement, the Franchisee shall not carry out any activity which would damage the goodwill of the Brand in any other way; and

Provided the obligation under this Agreement shall survive the aforesaid 12 (Twelve) months period. However, only in the event the Franchisor or the Franchisee is not desirous of renewing this Agreement for any reason other than that of breach by the Franchisee of the terms of this Agreement and provided 12 (Twelve) months' notice is given by the Franchisee which notice period shall not commence a day before the 12 (Twelve) months prior to the end of the term of this Agreement, the provisions of non complete for a period of 12 (Twelve) months by the Franchisee after the termination of this Agreement as provided herein shall not be applicable.

17. DISPUTES AND ARBITRATION

In the event of any dispute or differences arising directly or indirectly out of this Agreement, the Parties undertake to use all reasonable endeavours to resolve such dispute amicably. If disputes and differences cannot be settled amicably then all disputes and differences arising between the Parties hereto in connection with this Agreement or the interpretation hereof or anything done or omitted to be done pursuant hereto or the performance or non-performance of this Agreement shall be referred to the arbitration of a single arbitrator to be appointed

mutually by the Franchisor hereto and his / her award shall be final and binding on both the parties hereto. The arbitration shall be held at Delhi and expenses of the arbitration shall be borne in such manner as the arbitrator may determine. The arbitration shall be governed by the Arbitration & Conciliation Act, 1996 or such other law relating to arbitration as may be in force in India at the relevant time.”

7. The petitioner’s main grievance is that the respondent was collecting fees from the students in cash and not depositing the same in the designated Bank account, as required by Clause 6.1.17 of the agreement.

8. The petitioner, in the circumstances, terminated the agreement on 5th November, 2020. The notice of termination contained pointed allegations against the respondent having infringed the terms of the agreement.

9. The respondent, in his reply dated 26th December, 2020, denied the allegations, though the respondent acknowledged the fact that fees were received from the students in cash. The case of the respondent, as vocalised by Mr. Gadodia, learned Counsel, is that there was no proscription, in the agreement, against recovering fees from students in cash. The only requirement was that the fees, as and when recovered, were to be deposited in the designated Bank account of the petitioner. This, according to him, was done.

10. The petitioner alleges that, even after, termination of the agreement on 5th November, 2020, the respondent continued to use the “VIDYAMANDIR CLASSES” trademark of the petitioner. This provoked the petitioner to issue a Cease and Desist Notice to the

respondent on 8th May, 2021, calling on the respondent to cease and desist from continuing to use the petitioner's registered, "VIDYAMANDIR CLASSES", trademark or any mark deceptively similar thereto. The respondent was also directed to hand over, to the petitioner, all documents, contents and other materials, provided by the petitioner to the respondent consequent on the Franchise Agreement.

11. This was not done, resulting in the petitioner, *vide* communication dated 31st May, 2021, invoking the arbitration clause under Clause 17 of the agreement, by seeking reference of the disputes to arbitration.

12. It is further alleged that, thereafter, a meeting between the parties took place on 27th July, 2021, pursuant to which, with the consent of the respondent, an audit of the respondent's accounts was conducted, which revealed that the respondent was continuing to use the registered "VIDYAMANDIR CLASSES" trademark of the petitioner. This, alleges the petitioner, is in the teeth of Clauses 14.1 and 14.2 of the agreement.

13. It is in these circumstances that the present petition has been moved before this Court. The petition prays for issuance of *ad interim* orders, restraining the respondent from using the petitioner's brand name and registered trademarks, or any other mark comprising the words, "VIDYAMANDIR CLASSES", "VMC", or any other word name, mark, symbol, sign, emblem or logo, which would result in an association between the said mark of the plaintiff, or be deceptively

similar to the registered trade mark of the plaintiff. The prayer clause in the petition may be reproduced thus:

“45. In view of the facts and circumstances as afore-mentioned, it is most respectfully prayed that this Hon’ble Court may graciously be pleased to:

A. Pass an order of an ad-interim / interim injunction, restraining the Respondent his agents, employees and associates, from using the Petitioner's brand name and Registered Trademarks or any other mark comprising of the word “VIDYAMANDIR CLASSES”, “VMC”, “Vidyamandir Classes”, “Gurukul for IIT JEE Preparation”, “MathGenii”, “AimIIT” or any word, name, mark, symbol, design, emblem or logo or device bearing close similarity in sound, appearance or meaning to the Registered Trademarks of Petitioner which may cause confusion or mistake or may diminish or affect Petitioner's right in the Registered Trademarks.

B. Pass an order of an ad-interim / interim injunction, restraining the Respondent and his agents, employees and associates, from running the centre under the Petitioner's brand name and Registered Trademarks;

C. Pass an order of an ad-interim / interim injunction, restraining the Respondent, from directly or indirectly, using the proprietary and confidential database of the Petitioner including but not limited to course work, study materials, know-how, students list and records, reports, documents relating to teaching methods.

D. Pass an order of an ad-interim / interim injunction restraining the Respondent / its officials from withdrawing any amount from the bank account no. 060505501248 maintained with ICICI Bank situated at Birenu Trade Centre, 67, Pennar Road, Aambaga, Jamshedpur, 831001;

E. Pass an order appointing Local Commissioner to conduct inspection of the necessary documents, book of accounts, etc. of the Respondent and take the custody of all data, books, brochures, booklets, agreements, forms, student list and records, statement, files, teaching material, publicity material or

any such items and all other documents belonging to the Petitioner;

F. Grant ad-interim reliefs in terms of prayer clause (a), (b), (c), (d), and (e) above; and

Pass any other order/direction which this Hon'ble Court may deem just, fair and equitable in the aforesaid facts and circumstances."

14. As already noted above, the respondent has filed a reply to the petition and has also filed written submissions. Mr. Gadodia, learned Counsel for the respondent, has raised three contentions.

15. The first is that there was no proscription in the agreement, on the respondent taking payments in cash. All that was required was that the amounts collected were to be deposited in the designated Bank Account. This, as already noted hereinabove, was done. As such, he submits that no infraction of the agreement could be alleged on this ground.

16. The second contention of Mr. Gadodia is that the notice of termination, dated 5th November, 2020, was never acted upon, as, even after issuing the notice of termination, the petitioner corresponded with the respondent, directing the respondent to carry out various marketing activities, including publication of advertisement, etc., for inviting students to be enrolled with the respondent. As such, Mr. Gadodia submits that, even after issuance of the notice of termination, the petitioner continued to acknowledge the respondent as its authorised franchisee.

17. The third contention of Mr. Gadodia is that the future of students, who have enrolled with the respondent's institute, is at stake, and is a relevant consideration, to be borne in mind when examining the petitioner's prayer for grant of injunction. He submits that the course of study with the respondent is for one year, two years or three years. The course of study of the students who enrolled in 2020 with the respondent would, therefore, expire in 2022 or 2023. If, midway, the respondent is directed not to continue to use the "VIDYAMANDIR CLASSES" trademark or represent itself as associated with the petitioner, he submits that the students would be severely prejudiced. He also draws my attention to the order dated 29th October, 2021, passed by me, in which the pre-eminent interests of the students had been noticed.

18. I have heard Mr. Gyani, learned Counsel for the petitioner and Mr. Gadodia, learned Counsel for the respondent, at length.

19. The issue of whether the respondent had, or had not, defaulted in complying with the covenants of the Franchise Agreement with the petitioner, is an aspect which cannot engage the attention of the Court in proceedings under Section 9 of the 1996 Act.

20. A Division Bench of this Court has, recently, in *DLF Ltd v. Leighton India Contractors Pvt Ltd*¹, clearly held that, while

¹ 2021 SCC OnLine Del 3772

exercising its jurisdiction under Section 9, the Court should forbear from entering into the merits of the disputes between the parties or interpreting the covenants of the contracts between them. The following passages from the afore-mentioned judgment be reproduced thus:

“48. There is another aspect that needs to be discussed. While passing interim orders, relief that would amount to grant of a final relief must be eschewed. Also, while it is true that what would be the nature of an interim measure of protection that would appear to the court to be “just and convenient” would certainly vary from case to case. *But, while deciding on the relief, the court ought not to venture into determination of liabilities and the interpretation of clauses.* This Bench in ***Bhubaneswar Expressway***² (supra) has held as below-

“44. *If the Courts, in exercise of powers under Section 9, start enforcing the terms of the contract, it would do extreme disservice to the very concept of arbitration, where the parties choose to have their disputes adjudicated, instead of by the Courts, by Arbitrators of their choice.* In the present case, the appellant NHAI has disputed its liability for termination payment on diverse grounds, as can be understood from the narrative hereinabove of the arguments of the senior counsel for NHAI. ***If this Court, while exercising jurisdiction under Section 9, were to adjudicate whether there is any legal merit in the said grounds or not, this Court would be adjudicating the disputes, which the parties have agreed to be adjudicated by arbitration and in fact there would be nothing left for the Arbitral Tribunal to decide,*** as far as the claim of BEPL for the termination payment directed to be made is concerned. In fact, after reading the impugned judgment, we have also wondered what remains for the Arbitral Tribunal to decide, as far as the claim of BEPL for termination payment on a demurer, believing the breach to be on the part of BEPL, is concerned. ***It is a hard reality that***

² NHAI v. Bhubaneswar Expressway Private Limited, (2021 SCC OnLine Del 2421)

once there is judicial order on the merits of the dispute and which judicial order is not granting any interim measure but granting the final relief claimed in the arbitration proceeding, the Arbitral Tribunal would hesitate from deciding contrary to the findings returned by the Court on interpretation of terms of the Concession Agreement and of admission, and to which Court, an application under Section 34 of the Act would lie against the award of the Arbitral Tribunal.”

(Emphasis added)

49. In the instant case, both sides have extensively referred to communications between them, pertaining to extension of time to complete the project, the issuance of C.C., the defaults found in the work and the Clauses of the C.A., detailing the mutual rights and obligations. Clearly, therefore, these are matters that cannot be considered by the court in an application under Section 9. But the learned Single Judge has clearly dealt with the question of illegality and had laid the fault at the door of DLF. This it did on the basis of an assessment of the facts and the Clauses of the C.A. and concluded that while DLF could have encashed the RBGs, it was not proper to have encashed the PBGs and therefore, found it “just and proper” to direct DLF to furnish FDRs of the value of Rs. 143,87,22,708/-. The court has, thus, accepted the stand of Leighton, preferring it over the stand of DLF.

51. Now that the Arbitral Tribunal has been constituted and claims and counterclaims along with applications under Section 17 of the A&C Act have been filed and have to be decided, it would be in the interest of fair play that this Court does not embark into an assessment of material on record to determine who was at fault and whether the BGs have been encashed in terms of the Clauses of the C.A. or illegally and unlawfully and further, to grant a relief of the nature of a final relief of refunding or restituting, as claimed by Leighton. In our view, it would be beyond jurisdiction to direct restitution in proceedings under Section 9 of the A&C Act as restitution by its very nature involves a final determination of rival contentions even if it were to appear just and proper to do so.

Substantive questions have to be left to be decided in arbitration, the mode of dispute resolution chosen by the parties.

52. It is for the learned Arbitral Tribunal to determine all these issues relating to illegality of action, entitlement, liability, damages, etc. It is also for the learned Arbitral Tribunal to consider whether DLF would be required to furnish any security in the light of the claims and counter-claims made by the parties. Suffice it to note, at this juncture, as an interim measure, no case has been made out for grant of the relief claimed of refund or security that has been prayed for by Leighton.”

(Emphasis added)

21. The pernicious potentiality of any observation, entered by a Court under Section 9, influencing the arbitral proceedings, cannot be overlooked, even if the observations are entered without prejudice. Interpretation of the clauses of the contract between the parties, and assessment of allegations of breach leveled by the parties on each other should, ideally, be left for consideration by the Arbitral Tribunal. This position also stands recognized by the recent decision of the Supreme Court in *Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd*³.

22. The limited exercise of appreciation of the merits of the controversy between the parties, by a Section 9 Court, is restricted to satisfying the Court that a *prima facie* case for consideration exists. If the dispute is found to be wholly unsubstantial, or moonshine, the Court would, of course, decline to exercise Section 9 jurisdiction, as cumulative satisfaction of the troika of a *prima facie* case, balance of

³ 2021 SCC OnLine SC 718

convenience and irreparable loss, are required for the Court exercising Section 9 jurisdiction. These principles are, however, required to be applied only to the extent as would satisfy the Court that a dispute deserving a resolution by arbitration exists. Once that is established, the concern of the Court has to be whether a case for protecting the arbitral corpus, so as to ensure that the arbitral proceedings are not frustrated, does or does not exist.

23. For this reason, I do not deem it appropriate to examine, in any depth, the rival contention of the parties regarding compliance, by the respondent, with the covenants of the agreement. Suffice it to state that there is, admittedly, no provision in the agreement permitting fees from students to be collected in cash. The respondent has, in its reply, acknowledged that the provision, on the website of the petitioner, which permitted collection of fees in cash from students, was disabled in February, 2019. Even thereafter, the respondent continued to collect fees in cash from the students. The grievance of the petitioner is that the fees, as collected, were not deposited in the designated Bank Account as required by Clause 6.1.17 of the Franchise Agreement. Whether they were, or were not, so deposited, is an arbitrable dispute, which is outside the scope of examination by a Court exercising Section 9 jurisdiction. The issue is, in any event, certainly triable.

24. The respondent has also sought to contest the validity of the termination of the agreement on the ground that the notice of termination was not acted upon. This, too, is an arbitrable dispute which ought to be examined by the arbitrator. For the present, I may

only note that the e-mail communications dated 27th February, 2021, 10th March, 2021 and 26th March, 2021, from the petitioner, on which Mr. Gadodia seeks to rely, to support the submission that the respondent had not acted upon the notice of termination, appear to be communications sent to all the franchisees of the petitioner, as they are not addressed in particular to the respondent. These e-mails are reproduced as under:

E-mail dated 27th February, 2021

“From: Rahul Gandhi <rahul.gandhi@vidyamandir.com>
Date: Sat, Feb 27, 2021 ,18:41
Subject: Brochure Dispatch
To: <centres@vidyamandir.com>
Cc: <rbh@vidyamandir.com>

Dear Team,

We have dispatched/ are dispatching the first lot of New brochures (2021) along with Envelopes and Admission procedure/ Syllabus leafs. Artwork for the same is attached. If there are any changes required in the contact details panel-please let us know(through individual email) by coming Monday EOD(1st March) and the second lot of printing will start accordingly.

Thanks &Regards

-
Rahul Gandhi
Addl. General Manager | VMC
Mob. 9891612251”

E-mail dated 10th March, 2021

“From: Rahul Gandhi <rahul.gandhi@vidyamandir.com>

Date: Wed, Mar 10,2021 , 14:15

Subject: Poster JEE Main Result CDR file & PDF for reference

To: <centres@vidyamandir.com>
Cc: <rbh@vidyamandir.com>,
SandeepMehta<sandeep@vidyamandir.com>, Aman Mehta
<aman.mehta@vidyamandir.com>, Aveek Gupta
<aveek.gupta@vidyamandir.com>, SaurabhKumar
<saurabh.kumar@vidyamandir.com>, maheshbathla
<mahesh.bathla@vidyamandir.com>

Hi Team,

Please get a few printouts of this Poster from a local vendor and install it at your center's notice board/prominent locations. *Updated version will also be shared once the complete result is compiled.*

Thanks & Regards

-

Rahul Gandhi
Addl. General Manager | VMC
Mob. 9891612251"

E-mail dated 26th March, 2021

"From: Rahul Gandhi <rahul.gandhi@vidyamandir.com>
Dale: Fri, Mar 26, 2021. 15:53
Subject: JEE MAIN Result (March 21) Poster
To: <centres@vidyamandir.com>, <rbh@vidyamandir.com>
Cc: Abhishek Sharma
<abhishek.sharma@vidyamandir.com>, Sandeep Mehta
<sandeep@vidyamandir.com>, Saurabh Kumar
<saurabh.kumar@vidyamandir.com>, maheshbathla
<mahesh.bathla@vidyamandir.com>, AveekGupta
<aveek.gupta@vidyamandir.com>, Vidya Classes
<vmc.pankajkataria@gmail.com>, Amit<amit
.uniyal@vidyamandir.com>

Dear Team,

Kindly find attached the artwork of JEE Main (March, 21 attempt) Result Poster and please get few printouts from local vendor for installation at prominent places.

Thanks & Regards

-

Rahul Gandhi
Addl. General Manager | VMC
Mob. 9891612151”

25. It appears, therefore, subject to the respondent proving otherwise in arbitral proceedings, that these were standard e-mails issued by the petitioner at the commencement of a new Session, to all its franchisees. *Prima facie*, they cannot be treated as divesting the notice of termination dated 5th November, 2020, of its force and effect.

26. In so far as the fate of the students enrolled with the respondent is concerned, more appears to be made of this issue than it deserves. The respondent is not conducting professional courses which results in a granting of a duly recognized educational qualification. The classes being conducted by the respondent are merely tutorial/coaching classes for IIT aspirants. Any direction to the respondent, to cease to use the petitioner's registered trademark cannot, therefore, seriously impact the students. If the students are satisfied with the quality of education being provided by the respondent, there is no reason why the students would cease to avail the respondent's services even if it does not use the petitioner's registered trade mark. *Prima facie*, therefore, the fate of students cannot be said to hang in the balance, depending on whether the present petition is decided one way or the other.

27. On merits, a clear *prima facie* case of unauthorized use, by the respondent, of the petitioner's registered "VIDYAMANDIR CLASSES" trademark, even after termination of the Franchise Agreement between the petitioner and the respondent, exists. Mr. Gadodia, has not been able to justify the continued use of the petitioner's registered "VIDYAMANDIR CLASSES" trademark, even after the agreement was terminated. The continued use of the trademark, therefore, tantamounts to infringement and, therefore, a clear case for injunctioning the respondent from continuing to do so exists.

28. The petitioner has, in its written submissions, also referred to orders passed by this Court in earlier matters involving similar controversies, where injunctions were granted in exercise of Section 9 jurisdiction in *Little Millennium Education Pvt. Ltd. v. Monica Lalchand Vaswani & Anr*⁴ and *Sorrel Hospitality Pvt. Ltd. v. Nakodar Hotels Pvt. Ltd.*⁵.

29. The fact that, after, termination of the license to the said effect, a mark cannot be used by the erstwhile licensee, has also been noted by this Court in *Sheel International Ltd. vs. Shree Anu Milk Products Ltd.*⁶, *Fedders North American v. Show Line*⁷, *Velcro Industries B.V. v. Velcro India Ltd.*⁸, *Rob Mathys India Pvt. Ltd. v.*

⁴ 2018 SCC Online DEL 10237

⁵ 2018 SCC Online DEL 7730

⁶ 2013 SCC Online DEL 2287

⁷ 2006 (32) PTC 573 (DEL)

⁸ 1993 (1) Arb. LR 465

*Synthes Ag Chur*⁹ and *J.K. Jain vs. Ziff-Davies Inc.*¹⁰

30. The written submissions filed by the respondent have also raised an issue regarding delay, on the part of the petitioner, in approaching the Court. The petitioner has explained the delay on the ground that he did not choose to seek injunction while the 2021 year was in session, keeping the interests of the students enrolled with the respondent in mind. This appears to be a reasonable explanation. That apart, the Supreme Court in *Midas Hygiene Industries Pvt. Ltd. v. Sudhir Bhatia*¹¹, clearly held that the delay cannot defeat a prayer for injunction where infringement of registered trademarks is established.

31. Given the facts of the present case, and the discussion hereinabove, I am of the opinion that the petitioner is entitled to relief in terms of prayer (a), (b) and (c), in the petition. Grant of prayer (c) would also effectively subsume prayer (e), which seeks appointment of a Local Commissioner. In so far as prayer (d) in the petition is concerned, that, according to me, is a prayer which could more effectively be agitated in arbitration.

32. The petitioner has evinced its interests in resolution of the dispute by arbitration by issuing a Section 21 notice to the respondent on 31st May, 2021. In the event that the respondent does not cooperate, the petitioner would be at liberty to proceed in accordance with law to

⁹ 1997 (17) PTC 669(DB)

¹⁰ 2000 PTC 244 (DB)

¹¹ (2004) 3 SCC 90

ensure that the arbitral process is initiated and taken up.

33. I am informed by Mr. Gyani, learned Counsel for the petitioner, that, as the respondent did not respond to the notice, a Section 11 petition already stands filed before this Court on which notice is issued.

34. Accordingly, the respondent is restrained, pending disposal of the arbitral proceedings or pending any orders passed by the arbitral tribunal, affecting the order being passed today or pending any further orders passed by the Arbitral Tribunal, from using the petitioner's registered trademark "VIDYAMANDIR CLASSES" and "VMC", in any manner whatsoever, in connection with providing of educational/ coaching/ tutorial services, or in any associated or cognate activities. The respondent is also restrained from continuing to run their centre using the petitioner's registered brand name and trademark. Further, the respondent is directed to return to the petitioner, within two weeks of communication of this order to the respondent by the Registry of this Court, of all proprietary material of the petitioner, which was been provided to the respondent, consequent on the Franchise Agreement. The respondent shall stand restrained from using any of the said materials in connection with any services provided by it.

35. This order shall remain in force, pending and during the currency of the arbitral proceedings, subject to the authority of the Arbitral Tribunal to modify or vacate the order if it deems it

appropriate.

36. Prayer (d) in the petition remains open to be agitated by the petitioner in the arbitral proceedings.

37. All observations and findings in this judgment are only intended for the purposes of disposal of this petition under Section 9 of the 1996 Act. They shall not unduly influence the discretion of the Arbitral Tribunal either in deciding the main dispute between the parties or in adjudicating any interlocutory applications which either party may choose to file before it.

38. The petition is accordingly allowed, with no orders as to costs.

C.HARI SHANKAR, J

DECEMBER 1, 2021

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