* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Order delivered on : 28th April, 2016

\+ **OMP (I) No.185/2015**

M/s. Aura Wellness and Healing Services Pvt. Ltd. ....Petitioner
Through Mr. Manoranjan Kumar, Adv.

versus

Sh. Vijay Sharma ..... Respondent
Through Mr. Kunal Kunj, Adv. with
Mr. Hetesh Baisla, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 against the respondent for seeking various interim reliefs.

2. The petitioner is seeking the following directions against the respondent :

a. Direct the respondent to render the true accounts of the said outlet at Khan Market and pay the outstanding dues towards the petitioner's share,

b. Direct the respondent to pay the royalty as per the clause 7 of the deed,

c. Direct the respondent to handover the peaceful possession of the premises to the Petitioner,

d. Direct to restrain the respondent carrying on the business of same nature as of the petitioner,

e. Direct to restrain the respondent from disposing the petitioner's assets and property situated in the Khan Market,

f. Direct to restrain the respondent from operating the account which is in the name of partnership firm,

g. Direct to stop the respondent from using the petitioner's company logo and design in any stationery items including the vouchers and receipts,

h. Direct to restrain the respondent from handing over the premise in the hand of any third party or care taker without the permission of the petitioner.

i. Award costs of litigation to the petitioner.

j. Pass any other or further order/s as may be deemed fit, just and proper in the facts and circumstances of the case in favour of the petitioners.

3. The case of the petitioner is that the petitioner is carrying on business of providing wellness and spa services who has built up tremendous reputation and goodwill in wellness and spa industry.

4. The respondent had approached the petitioner being desirous of leasing the brand of the company and pursuant to the understanding arrived between the parties, a Partnership Deed dated 23rd April, 2013 came to be entered into between the respondent and the petitioner-Company whereas the partnership commenced from 1st April, 2013, towards setting up the franchised business in partnership from the location being Flat No.55, First Floor, Khan Market, New Delhi-110003 (the lease deed of which is

registered under the name of the petitioner.). As per the said Partnership Deed dated 23rd April, 2013, the franchised outlet to be run under the Brand name of the Company ("the outlet") under the partnership firm name ‘Harmony Wellness Services’ (hereinafter referred to as the said ‘Partnership Firm’) under the brand of the Company being "Aura Thai Spa"(the brand). Pursuant to the Partnership Deed dated 23rd April, 2013, the aforesaid outlet at Khan Market commenced business operations under the said brand name with effect from 1st April, 2013.

5. As per the aforesaid Partnership Deed, the petitioner was entitled to receive its share from the partnership business under the name and style of ‘Harmony Wellness Services’ carried on from the outlet premises and was also entitled for rendition of true and correct accounts of the partnership business which was being carried out from the outlet premises. Also, the petitioner was entitled to receive royalty fees from "Harmony Wellness Services", as has been agreed upon in the Partnership Deed dated 23rd April, 2013. However, despite several requests, reminders and follow-ups with the respondent by the petitioner for providing the true and correct details of the sales made at the outlet, as well as the royalty fees due to the petitioner's company, the respondent has continuously and intentionally failed and neglected to honour the commitment with malafide intentions to make wrongful gains to himself and cause wrongful losses to the petitioner's Company and have thus cheated and defrauded the petitioner and misappropriated the revenue generated at the outlet.

6. Counsel had referred the clause 7 of the Partnership Deed as per which the partnership deed stands terminated since the respondent has failed to pay the petitioner's royalty. The said clause has been reproduced here as under:-

> Clause 7: "The partnership firm shall, from the date of commencement of the operations of the said unit, pay 10%(ten percent) of the total monthly revenue collected at the said unit to the Franchisor M/s Aura Wellness and Healing Services Pvt. Ltd, towards the monthly royalty fees. The Services tax shall be extra as applicable. It is hereby agreed by and between the parties herein that if franchise fails to pay monthly royalty for consecutive 3 months. In that event this Unit Franchise Agreements shall stand ipso facto terminated, and the Franchisor shall be at liberty to take over and run the business of the said unit to the exclusion of the Franchisor until it recovers the defaulted amount of royalty. The franchisee shall not be at liberty to remove the sign board during the period of this."

7. On 7th April, 2015, the petitioner had sent a legal notice to the respondent through his lawyer for invoking arbitration proceeding as per the Clause 28 of the Partnership Deed which reads as under:-

> "28. All disputes and questions whatsoever which shall either during the subsistence of the Partnership or afterwards arise between the Partners or between one or more of them and the legal representatives of other or others or between their respective legal representatives touching the business of the Partnership or interpretation of this Deed or the construction or application thereof or any clause or thing herein contained or any account, valuation or division of assets, debts or liabilities to be made hereunder or as to any other matter in anyway

> relating to the Partnership business or the affairs thereof or the rights, duties or liabilities of any person under this deed shall be referred to arbitration of a common arbitrator, if agreed upon, failing which to (2)two arbitrators one to be appointed by Partner 1 and the other to be appointed by Partner 2 and in accordance with the subject to the provisions of the Indian Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force. The place of arbitration shall be in Mumbai, India and the arbitration shall be conducted in English Language."

8. It appears from the record that the respondent's wife is now operating the said business. The contention of the respondent in his reply is that the there is no disclosure of the amount calculated or the month for which the monthly royalty has not been paid as per Clause No.7 of the partnership deed. The respondent has denied all other allegations made in the petition. Despite of directions, the respondent failed to appear before the Court so that the dispute could be resolved as suggested by the learned counsel for the petitioner. Thus, no option is left with the Court but to decide the present petition.

9. The main dispute of the petitioner is that the respondent did not render true account despite of using the brand name and hence to pay the damages.

10. The respondent has not denied the fact about the Partnership Deed and carrying on the business from 1st April, 2013. There is no specific answer to the query as to whether any royalty has been paid by the respondent to the petitioner or not.

11. Thus, in fact it appears that the real dispute is with regard to rendering of true accounts and damages claimed. The said aspect is to be finally considered and decided by the Arbitral Tribunal. The relief of damages cannot be decided by this Court. As far as use of brand name is concerned, if the respondent is still using the same, they shall not use the same in the meanwhile. The respondent in the meanwhile is directed to render the true accounts from the period of 1st April, 2013 till date (if the respondent has used the brand name of the petitioner) within the period of 4 months from today. The rest of the disputes would be adjudicated by the Arbitral Tribunal if any of the parties would invoke the arbitration.

12. The petition is disposed of.

(MANMOHAN SINGH)
JUDGE

APRIL 28, 2016