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

\+ O.M.P.(I) (COMM.) 120/2017

TRINITY FASHION BROADCASTING AND MERCHANDISING PVT'. LTD. ..... Petitioner

Through: Mr Sandeep Sethi, Senior Advocate with Ms Tanya Dayal, Mr Rishabh Sinha, Mr Kshetragya Nath Singh, Advocates and Ms Sakshi Saxena (Legal Manager).

versus

KASHIFF KHAN & ORS. ..... Respondents

Through: Mr Sudhir Nandrajog, Senior Advocate with Mr Uday Pratap Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 14.03.2017

IA No. 3188/2017

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

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3. Issue notice. The learned counsel appearing for the respondents accepts notice.

4. With the consent of the learned counsel for the parties, the petition has been heard.

5. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

"(a) Restrain Respondent No.1 and other entities controlled by him including Respondent No.2, from representing or claiming to have any interest in the F Brand or association with Respondent No.3;

(b) Restrain Respondent No.1 and 2 from using either the F Brand or any variation thereof as part of their corporate, firm or business name or for any other purposes;

(c) Restrain Respondent No.1 and 2 from all use of the F Brand (including any colorable imitation thereof) for any purpose whatsoever;

(d) Direct Respondents No.1 and other entities controlled by him including Respondent No. 2, to forthwith hand over to the Petitioners, all documents, material (including any copies thereof) and any other property containing Confidential Information belonging to the Petitioners relating to F Brand products, proprietary concepts, operations, marketing interests and other affiliated documents;

(e) Restrain Respondent No. 1 and other entities controlled by him including Respondent No.2, from creating any third party right, title or interest in relation to F Brand;

(f) Secure the amount in dispute in the present proceedings by directing the Respondents No.1 and 2 to deposit in the Hon'ble Court security in the form of Bank Guarantee or an interest bearing fixed deposit or such other security as this Hon'ble court may deem fit;

(g) Direct Respondents No. 1 and other entities controlled by him including Respondent No.2, to make complete disclosure and produce all agreements relating to his dealings with third parties in relation to the F Brand in the Territory."

6. Mr Sethi, learned Senior Counsel appearing for the petitioner has confined the petitioner's prayer at this stage for seeking to restrain respondent no.1 and other entities controlled by him including respondent no.2 from representing or claiming to have any interest in the F Brand or association with respondent no.3.

7. He has drawn the attention of this Court to clause X of the “F Spas Agreement” dated 09.12.2014 which reads as under:-

> "**X. <u>INTELLECTUAL PROPERTY RIGHTS</u>**
>
> 1) Neither this Agreement nor the operation of the Franchised Business shall in any way give to be deemed to give to the LICENSEE any interest in the Brand or other related Brand except for the right to use the Brand solely for the recruitment of Sub-Franchisee in the approved Location, in accordance with the terms and conditions of this Agreement. The LICENSEE shall not use the Brand in any manner calculated or intended to convey to general public or anyone else to represent that it is the owner of the Brand or related trademarks. Neither during the Term of this Agreement nor at any time after expiration or termination hereof, shall the LICENSEE, either directly or indirectly, dispute or contest the validity or enforceability of the Brand, attempt any registration thereof, or attempt to dilute the value of any goodwill attaching to it. Any goodwill LICENSEEd with the Brand shall ensure exclusively to the benefit of SECOND LICENSOR.
>
> 2) Without in any way restricting or limiting subsection X (l) hereof, the LICENSEE covenants and agrees as follows:
>
> (a) that contemporaneously with the execution of this Agreement or forthwith upon any request by

SECOND LICENSOR, the LICENSEE will execute such agreements or other instruments in such form and with such parties, as SECOND LICENSOR in its sole discretion shall specify, for the purpose of protecting the interests and rights of Brand, or complying with any applicable trade name, trademark or other similar legislation;

(b) that the LICENSEE will not use either the Brand or any variations thereof as any part of its corporate, firm or business name or for any other purposes, save and except in accordance with the terms and conditions of this Agreement or as may otherwise be specifically authorized by SECOND LICENSOR in writing; and

(d) forthwith upon the expiration or termination for any reason whatsoever of their Agreement, the LICENSEE shall cease all use of the Brand (including any colorable imitations thereof) for any purposes whatsoever and the LICENSEE either directly or through the Operator shall return all merchandise/material bearing the Brand of the FIRST LICENSOR/ SECOND LICENSOR.

3) The LICENSEE shall immediately notify the SECOND LICENSOR of any infringement of or challenge to the use of the Brand and SECOND· LICENSOR shall have the sole discretion to take such action as it deems appropriate.

4) The LICENSEE acknowledges that under the terms and conditions of this Agreement, the SECOND LICENSOR has granted limited use of the Brand to the LICENSEE. Therefore, the authorized applicant or person who undertakes the functioning and usage of the said Brand, for the purpose of the Business shall be Mr. Kashiff or any of its affiliates, subsidiaries or any Company incorporated under the Companies Act 1956

> (hereinafter referred to as the "Key Person"). The Key Person shall play an active role in the co-coordinating and operations of the Brand name and shall make his best efforts in the design construction, implementation and communication towards operation of the LICENSEE to set up the Business."

8. Mr Sethi, learned Senior Counsel has also drawn the attention of this Court to the caution notice published by respondent no.1 in the newspapers and the opening sentence of which reads as under:-

> "This is to inform all our prospective / Potential Partners, Investors and Franchisees and the public at large that all rights, title and interests in the brand, logo and the trademark "F" brand and its related brands including F SPAS, F SALONS, F BAR, F CAFE, F BISTRO, F LOUNGE, F CLUB, or any other such iterations relating to food and beverages for the Indian territory is vested solely and exclusively with M/s F HOSPITALITY INDIA LLP. M/S F. SALON INDIA LLP. M/S F SPA INDIA LLP."

9. He submitted that the said caution notice is in conflict with the express agreement between the parties.

10. Mr Nandrajog, learned Senior Counsel appearing for the respondents contended that the notice of termination was issued on 03.02.2017 and in terms of the agreement, the respondents would have 60 days time to remedy the breach. He earnestly contended that in the aforesaid circumstances, the present petition was pre-mature. He also submitted that there are some disputes between the parties in relation to payments and respondent no.1 has already issued a notice invoking the arbitration clause. He pointed out that in terms of the arbitration clause, the arbitrator is to be appointed by the

petitioner and thus the petitioner was not precluded from appointing the arbitrator and approaching the arbitral tribunal for relief.

11. At this stage, this Court is not inclined to examine the various disputes between the parties. However, it is apparent that the representations being made by respondent no.1 as to its ownership right, title or interest in the brand, trademarks in question is *prima facie* unsustainable.

12. In terms of the agreement between the parties, it was expressly agreed that respondent no.1 would have no right, title or interest in the F brand. The notice published by the said respondent, runs contrary to the express terms of the agreement. Accordingly, respondent no.2 or any of their agents are restrained from representing, holding out any representation that they are either the owners or have any right, title or interest in the "F Brands" as set out in the petition.

13. It is clarified that nothing stated herein would preclude the parties from approaching the arbitral tribunal as and when constituted for such reliefs as may be advised. The other parties to the agreement would also be at liberty to approach the arbitral tribunal for seeking a modification / vacation of this order. It is further clarified that the arbitral tribunal would not be precluded from considering the same.

14. The petition is disposed of.

VIBHU BAKHRU, J

MARCH 14, 2017
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