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

% Date of Decision: 11.10.2017

\+ O.M.P.(I) (COMM.) 208/2017 & I.A.No.7157/2017

ASEVA LIMITED LIABILITY CORPORATION ..... Petitioner

Through Mr.D.N.Ray, Mr.Lokesh Kumar Choudhary and Mr.Dillip Kumar Nayak, Advs.

versus

SUPERFICIAL HEALTH AND SPA PRIVATE LIMITED & ORS. ..... Respondents

Through Mr.Uday Pratap Singh and Mr.Akshit, Advocates for R-1.
Mr.Kunal, Advocate for R-3.
Mr.Rajiv K.Garg and Mr.Ashish Garg, Advocates for R-5.
Ms.Zehra Khan, Advocate for R-6.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. This petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act')* seeking an injunction to restrain respondents for seeking the following reliefs :

> "A. Grant Injunction restraining Respondent No. 1 from entering into Letters of Intent for sites at different locations without entering into individual Sub-Franchisee Agreements (Tripartite Agreements) and without payment of the initial franchisee fee accruing

under the Sub Franchise Agreement (Annexure p-3) as it is only the petitioner who is the sole Master Franchisee For establishing Woodhouse Spa chains in the whole of India.

B. Injunct the operations and implementation of Letter of Intent already executed by the Respondent No.1 in favour of third persons for the sites at Jalandhar and Amritsar and the construction which is undergoing in fill force at the above sites be stopped with immediate effect.

C. Restraining Respondent No. 1 from forcibly trying to remove the Petitioner and its affiliates from the site in question so as to avoid paying the legitimate costs and dues of the Petitioner.

D. Allow the petitioner sole and unrestricted access to the site and its assets for care and maintenance.

E. Injunct and restrain Respondent No. 1 and its servants, agents, representatives and any other person acting for and on behalf of the said Respondent to execute any arrangements with any third parties, substantially similar to the scope of works of the petitioner.

F. Restraining Respondent No. 1 from unilaterally trying to terminate the Sub- Franchisee Agreement by entering into various third party agreements for the same site by misusing the International brand name of the petitioner and that too without payment of outstanding liabilities and liquidated damages including royalty, project etc. due towards the petitioner.

G. Provide an interim arrangement to secure and protect the huge financial exposure of the petitioner by attaching the revenues generated by respondent No. 1 and providing its rendition of account and further by attaching the property of Respondent No. 1 on which the project is located.

H. Restraining Respondent No. 1 from deterring the Project completion and running of the Project including day to day operations and responsibilities during the

> pendency of the Arbitration proceedings.
> I. Restrain the Respondent No. 1 and 3 & 4, not to implement and operationalize the Letters of Intent, executed by Respondent No.1 in favour of third persons for the sites at Jalandhar and Amritsar and the construction which is undergoing in full force at the above sites be stayed during the pendency of the present petition.
> J. Restraining Respondents Nos. 5 and 6, respectively, not to interfere to the supply the electricity and water connection to the mall and/or the . Accordingly, the gym under the name of style of the Woodhouse Day Spas Corporation.
> K. Liquidated damages including royalties, project and other development costs and revenues lost and due towards the petitioner.
> L. Pending hearing and disposal of the petition grant exparte interim reliefs in terms of the prayers (A) to (K) above.
> M. Pass a direction for costs
> N. Pass such other and further order(s) which this Hon'ble Court may deem just fit and proper in the facts of the present case."

2. The petitioner and respondent No.2 entered into an arrangement with the intention to expand the Spa chain of respondent No.2 in the emerging market of India. Consequently, a Letter of Intent dated 17.06.2010 was addressed to the petitioner by respondent No.2. A Master Franchisee Agreement was also entered into on 08.07.2011. Hence, all franchisee rights to initiate plan for establishment and operation of Day Spa business in the name and style of respondent No.2 i.e. Woodhouse Day Spas in India were granted to the petitioner as provided in the Agreement.

3. Subsequently, a Sub Franchisee Agreement (Tripartite Agreement) dated 13.09.2010 was executed between the respondent No.1, respondent

No.2 and the petitioner. Thereafter, Sub-Master Franchisee Agreement was also entered into between three parties on 08.07.2011.

4. It is the case of the petitioner that the above agreement which respondent No.1 has entered into for establishment and operation of a flagship location of the Woodhouse Day Spas in India in the location at West End Mall, Ludhiana was a stepping stone towards a much bigger scheme.

5. Disputes having arisen between the parties, the present petition has been filed by the petitioner under Section 9 of the Act. Earlier, this petition was filed before the Punjab & Haryana High Court. The Punjab & Haryana High Court by its order dated 06.05.2016 passed on injunction order whereby the respondent was restrained from interfering in the petitioner managing the gym. On 13.06.2016, thereafter, respondent No.5 was directed to restore the electricity and water connection to the gym in question. On 03.05.2017, the said court held that the petition was not maintainable as the judicial seat of arbitration was Delhi. Hence, the petitioner approached this court for appropriate orders.

6. This court vide order dated 26.05.2017 continued the operation of the injunction orders passed by the Punjab & Haryana High Court. In view of this interim order, the respondent No.5 has now moved an application I.A. No.7157/2017 praying to recall the order dated 26.05.2017 and to direct the petitioner to pay all the dues of the respondent No.5.

7. It is the case of respondent No.5 that he is owner of the Mall known as Wave Mall, Ludhiana. It is urged by respondent No.5 that maintenance agreement dated 13.09.2010 was entered into between respondent No.5 Central Mall Maintenance Agency and respondent No.1 which was also

signed by the Director of the petitioner by Ms.Kay Ghoman. It is also urged that the respondent No.5 has nothing to do with dispute between petitioner and respondent No.1. The respondent No.5 claims that an amount of Rs.2,19,54,597/- is due on account of facilities and appropriate services given to respondent No.1and hence the stay against respondent no. 5 be vacated. It is urged that the respondent no. 5 cannot be made to supply free electricity and water to respondent no.1.

8. The learned counsel for the respondent No.1 submits that as far as he is concerned since 2016, he is not in possession and control of the present spa. He further submits that it is the petitioner who is running the spa and also making the collections of the revenue. He further points out that pursuant to an agreement between respondent No.1 and Ms.Kay Ghoman, Director of petitioner-company, an award was passed on 07.12.2015 by consent of the parties whereby the respondent No.1 agreed to pay Rs.70,00,000/- to Ms.Kay Ghoman. He further submits that Rs.42 lacs have already been paid and balance amount Rs.28 lacs was not paid as the petitioner commenced the present proceedings under Section 9 of the Act before the Punjab & Haryana High Court. He further submits that the clients are ready and willing to pay the balance sum of Rs.28 lacs and in full and final claim of the petitioner. He also submits that dispute which were subject matter of the award dated 07.12.2015 arise out of Sub-Master Franchisee Agreement between the petitioner respondent No.1 and respondent No.2.

9. The learned counsel for the petitioner has however denied that they are running the spa or appropriating the cash proceeds which are received from running of the gym. He further submits that the disputes which are subject matter of the award dated 07.12.2015 are materially different and

distinct from the disputes which have been raised by the petitioner and for which the present petition is filed. He further submits that the award dated 07.12.2015 pertains to disputes with Ms.Kay Ghoman in her individual capacity with respondent No.1. It has nothing to do with the petitioner company.

10. He further states that the gym in question which is being now run by respondent No.1 is a flagship project initiated and it would have further given a boost to the functioning of the petitioner and the Master Franchisee Agreement that the petitioner has with respondent No.2. He further submits that a sum of Rs.2 crores has been invested by petitioner in respondent No.1 though he is unable to give full details at this stage.

11. I will now deal with the submission of the parties. Coming to the award dated 07.12.2015 which is relied upon by respondent No.1, a perusal of the award would show that it is dealing with a dispute between Ms.Kay Ghoman and Mr.Inderpreet Singh Chadha. It prima-facie appears to be a settlement of dispute between two individuals and not between the petitioner and respondent No.1.

12. The petitioner seeks continuation of running of the gym that is its alleged flagship project as it necessary for projecting the brand image. It is urged that irreparable loss and injury will be caused if the Gym were to shut down. The learned counsel for the respondent No.1 has pointed out that they are not running the gym or collecting the proceeds from running the gym. In any case, it is manifest that the dues of respondent No.5 for electricity, parking and water cannot be left unpaid. The gym cannot run without paying of essential basic amenities. Accordingly, I direct that if the petitioner seeks continuation of facilities from respondent No.5 it would

have to bear the liability for the services being provided by respondent No.5 without prejudice to the rights and contentions of the petitioner including its right to recover the same from respondent No.1 as per law. Hence, 4 'weeks' time is granted to the petitioner to clear the dues of the respondent No.1 and thereafter to continue to pay the monthly dues of respondent No.5. In the eventuality that the petitioner seeks to take advantage of this period of four weeks from today for paying the dues of respondent no. 5, it will further file an undertaking within a week to the court to pay the dues of respondent no.5. In such an eventuality of filing of the undertaking and clearing the monthly dues of the respondent No.5, the petitioner may continue to run the gym and collect the proceeds thereof. Respondent no.5 shall continue to provide the electricity, water and parking facilities. However, full amount of collection and expenditure incurred shall be maintained by the petitioner.

13. As far as respondent No.6 is concerned namely the Punjab State Power Corporation Ltd., they have nothing to do with the present dispute and accordingly, the respondent No.6 is deleted from the array of parties.

14. The learned counsel for the petitioner has pointed that they have initiated steps for appointment of arbitrator by ICC. In terms of the Sub-Master Franchisee Agreement Dated 08.07.2011, there is an arbitration clause which provides for adjudication of the dispute under rules of arbitration of the International Chambers of Commerce (ICC) though the seat of the arbitration is Delhi. He further submits that the steps have been taken by petitioner to initiate the arbitration proceedings. The present interim order shall continue to operate provided the petitioner expeditiously shows completion of all formalities for appointment of an arbitrator by ICC within 6 weeks from today. An affidavit to the said effect shall be filed

within 6 weeks.

15. The learned counsel for the petitioner also submits that for the present, he does not press any relief against respondent No.3. If any necessity arises at a later date liberty to press for such relief is sought as per law. Accordingly, respondent No.3 is also deleted from the array of parties granting liberty as sought.

16. It is made clear that all issues are left open and parties are at liberty to raise all the objections before the learned arbitrator. Liberty is also granted to respondent No.1 to seek any modification or vacation of the present interim order before the learned arbitrator as per law.

17. Petition stands disposed of.

18. A copy of this order be given Dasti under signatures of the Court Master.

JAYANT NATH, J.

OCTOBER 11, 2017/rk