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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 26th July, 2018

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O.M.P.(I) (COMM.) 272/2018

LITTLE MILLENNIUM EDUCATION PVT LTD

..... Petitioner

**Through: Ms.Amrita Singh & Ms.Bhavna
Gandhi, Advs.**

versus

MONICA LALCHAND VASWANI & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') *inter alia* making the following prayers:-

- a) *restrain the Respondents and their agents, representatives, employees, officials etc. from representing, in any manner whatsoever, to the world at large, that the Respondents are franchisee of the Petitioner or are in any manner associated with the Petitioner;*
- b) *restrain the Respondents from using the brand name, trademarks, logos, designs, copyright materials including Know-How manuals, training resources, teaching aids and materials, curriculum books, Franchisee Kit etc. and other intellectual properties of the Petitioner;*

- c) *direct the Respondents to return to the Petitioner all Know- How manuals, training resources, teaching aids and materials, curriculum books, Franchisee Kit etc. which were provided by the Petitioner to the Respondents for the purposes of the Franchisee Agreement or which came into the power or possession of the Respondents under, pursuant to, or in connection with the Franchisee Agreement; and also direct the Respondents to return to the Petitioner all letter-heads, visiting cards, carry bags and other promotional material which may bear any tradename/trademark/logo/ trade descriptor of the Petitioner;*
- d) *direct the Respondents to issue a certificate to the Petitioner, certifying that no written or electronic copies of the Know-How Manuals remain in the possession of the Respondents and that the Respondents have ceased to use the Know-How Manuals;*
- e) *allow the Petitioner to inspect the books of accounts and other records of the Respondents from April 2017 till such time as the Respondents continue to operate under the Petitioner's brand name; ”*

2. In spite of service of notice, the respondents have not entered appearance.

3. It is the case of the petitioner that the petitioner had entered into a Franchise Agreement dated 18.05.2016 with the respondents *inter alia* granting a license to the respondents to operate “Little Millennium Centre” using the “Little Millennium Programme” as also to use the trade mark “Little Millennium” at the said Centre. The said license is non exclusive in nature and specifically provides that incase of termination of the license/Franchise Agreement, the respondents shall cease to use the trade mark “Little Millennium” and/or the Intellectual Property and Know-How of the petitioner. The relevant Clauses of the Franchise Agreement are

reproduced hereinunder:-

“2.1 In consideration of the payment by the Franchisee to the Franchisor of the Franchisee Fees as agreed hereunder and in consideration of the Franchise agreeing to pay the Franchisor continuing or recurring fee by way of royalty, upon the dates and manner hereinafter mentioned, the Franchisor hereby grants a personal, non-exclusive, non-transferable, non-assignable and limited franchise to the Franchisee to operate the Little Millennium Centre by implementing the Little Millennium Program, and to use only the Trade Name Little Millennium at the said Centre and to conduct the Centre on terms and conditions of this Agreement for the duration of the term of this Agreement. The Franchisee agrees not to use any other trade name, logo and trademark in the conduct of the said Little Millennium Centre. The Franchisee further undertakes not to claim any rights, titles or interest to the Trade Name at the time of termination of this Agreement and all rights in the said Trade Name shall belong, lie and vest in perpetuity with the Franchisor.

2.2. The Franchisee shall conduct the Little Millennium Program in strict accordance with.

2.2.1. The specifications, instructions, standards and requirements of the Franchisor set forth in the know-how Manuals (as may be updated/amended or elaborated from time to time and supplied to the Franchisee by the Franchisor, whether in writing or via the website of the Franchisor/e-mail or by way of compact discs or DVD or any other mode that the Franchisor deems fit).

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2.2.4. Franchisee shall not directly or indirectly apply/use the know-how Manuals upon the expiry or upon earlier termination of this Agreement (for any reason whatsoever) and shall forthwith discontinue the use and return the Know-How Manuals to the Franchisor immediately thereupon. Upon termination of this Agreement for any reason whatsoever, the Franchisee shall also not use the Trade Name, trademark, logo, design, publicity/promotional material, packaging drawings,

know-how, games and teaching skills of the Franchisor, and forthwith return to the Franchisor all the material which belong to the Franchisor and which bear the Trade Mark, trade name, logo and design of the Franchisor. Franchisee shall not keep or deliver to anyone else any of the aforesaid documents, data, material or thing or any reproduction thereof, or any description containing or pertaining to any part of the Know-How Manuals and an authorized representative(s) of Franchisee shall certify and provide that certification to Franchisor that no written or electronic copies of the Know-How Manuals remain in the possession of Franchisee and that Franchisee has ceased to use the Know-How Manuals.

3. GRANT OF LICENCE

*3.1 In furtherance to the grant of the franchise, the Franchisor hereby grant a personal, non-exclusive, non-assignable and non-transferable license to the Franchisee to implement the Little Millennium Program and to use the Know-How Manuals for operating the Little Millennium Centre at its Premises. The Franchisor hereby grants the said license to the franchisee to carry on the learning Centre as a Franchisor hereby grants the said license to the franchisee to carry on the learning Centre as a Franchisee of **EDUCOMP CHILD CARE PVT. LTD.** in the following segments under the brand name Little Millennium.*

<i>Segment</i>	<i>Approximate Indicative Age Group</i>
<i>Developing Roots (Play Group)</i>	<i>1.8 to 2.5 Years</i>
<i>Emerging Wings (Nursery)</i>	<i>2.5 to 3.5 Years</i>
<i>Ready to Fly (Kindergarten)</i>	<i>3.5 to 5.5 Years</i>

at its premises in the name and style of Little Millennium and as advised by the Franchisor in the Operations Manual or through separate communications from

3.2 The non-exclusive license to implement the Little Millennium Program and to use the Know-How Manuals shall include the non-exclusive license to the Franchisee to use the

Intellectual Property Rights.

3.3 The Franchisor may from time to time, update/amend or elaborate the Know-How Manuals and inform the Franchisee accordingly. The Franchisor shall not however be under any obligation whatsoever, to provide updates and revisions of the Know-How Manuals to the Franchisee. The Franchisee shall not without prior written permission of the Franchisor, use the Know-How Manuals for any purpose other than for the purpose of this Agreement.

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9.3 Termination for Convenience. *The Franchisor shall be entitled to terminate this Agreement at the end of the Franchisee Academic Year by giving minimum 90 (Ninety) day's written notice to the Franchisee, without assigning any reasons whatsoever. The Franchisee shall continue to carry on its operations in accordance with the terms of this Agreement during the notice period, unless otherwise agreed by the Parties.*

9.4 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-compete, confidentiality, intellectual property and corrupt practices.*

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9.7 On the termination this Agreement:

9.7.1 *the Franchisee shall, without claiming any lien or other right whatsoever, forthwith deliver to the Franchisor all Items, records, reports, things whatsoever which come into the Franchisee's power or possession under, pursuant to or in connection with this Agreement;*

9.7.2. *the Franchisee shall immediately cease to use the Little Millennium and shall not thereafter hold itself out in any way as a Little Millennium Centre and refrain from any action that would or*

may indicate any relationship between it and the Franchisor and shall not carry out any activity which would damage the goodwill of the Franchisor;

9.7.3. the Franchisee shall dispose-off the Products in accordance with the reasonable directions of the Franchisor;

9.7.4. the Franchisee shall immediately cease to use in any way whatsoever any and all of the intellectual property and know-how of the Franchisor, and return or hand over all manuals, know-how and other details in relation to the Franchisee Premises to the Franchisor, it being clearly understood that all rights in respect of the same belong to the Franchisor and all intellectual property and ownership rights in respect thereof are with the Franchisor. The Franchisee shall not be permitted to make any copies of this and save them for further use.

9.7.5. the Franchisee shall cease to be entitled to use any material provided by the Franchisor for any purpose whatsoever. Forthwith upon termination or expiry of the term of this Agreement, the Franchisee shall return to the Franchisor all items, publicity material, documents, manuals, software, hardware, etc. provided by the Franchisor to the Franchisee hereunder of in connection with this Agreement without claiming any lien or other right thereon. The Franchisee shall also deliver to the Franchisor forthwith all material whatsoever (including letter-heads, visiting cards, carry bags and other promotional material) which may bear any Trade Name / Trade Descriptor / Scheme Name. The Franchisee shall not make any copies of these and save them for any further use.

9.7.6 the Franchisee shall return to the Franchisor all signboards, infrastructure, signs and other property:

(a) which belong to the Franchisor shall be handed over by the Franchisee to the Franchisor without claiming any right of lien or otherwise thereon.

(b) which belong to the Franchisee and which in any manner indicate the Trade Name / Trade Descriptor / Scheme name or in any manner bear a reference to any of the Franchisee's Functions to be discharged by the Franchisee shall be destroyed and shall not be used by the Franchisee in any manner whatsoever so long as they bear such or any similar name, logo or design. A certificate of such destruction shall be

provided by the Franchisee to the Franchisor.
9.7.7 the Franchisee shall cease to use the Trade Name / Trade Descriptor of Little Millennium.”

4. The petitioner claims that as the respondents failed to pay the agreed royalty, the petitioner on 29.03.2018 issued the termination notice under Clause 9.4 of the Franchise Agreement. However, instead of making payment of the royalty amount, the respondents by its reply dated 31.03.2018, raised counter claims against the petitioner. This notice has been replied by the petitioner vide its letter dated 26.04.2018.

5. The Franchise Agreement contains an Arbitration Agreement between the parties in form of Clause 11.2 of the Franchise Agreement, which is reproduced hereinbelow:-

“11.2. The Parties shall use their best endeavour to settle amicably amongst themselves any and all disputes arising out of or in connection with this Agreement or the interpretation thereof. Any outstanding dispute shall be settled by sole arbitrator appointed by the Franchisor in accordance with the Arbitration and conciliation Act, 1996. The venue for arbitration shall be New Delhi and the language shall be English.”

6. The Franchise Agreement also confers exclusive jurisdiction to the courts at Delhi in form of clause 12.11 which is reproduced hereinbelow:-

*“12.11. **Jurisdiction.** Courts at New Delhi shall have exclusive jurisdiction to any matter in relation to this Agreement.”*

7. The respondents, in spite of the Arbitration Agreement between the parties, filed a Civil Suit before the City Civil Court, Ahmedabad being Suit No. 770/2018, seeking relief of declaration and permanent injunction. It is contended that in the said suit, the petitioner has filed an application under

Order VII Rule 11(a) of the Code of Civil Procedure, 1908 relying upon Section 8 of the Act. It is submitted by the counsel for the petitioner that in the said suit there is no order of restrain passed by the Court against the petitioner from giving effect to the termination notice. Learned counsel for the petitioner has relied upon the Judgment of the High Court of Bombay in ***Sharda Raje Uday Singh Rao Gaekwar vs. Veer Corporation***, (2012) 2 Mah.LJ 242, to contend that mere pendency of the suit would not bar this Court from hearing the present application filed under Section 9 of the Act.

8. I have considered the submissions of the learned counsel for the petitioner.

9. The Franchise Agreement clearly shows that the respondents were granted a right to use the trade mark “Little Millennium” only as licensee during the period of the Franchise Agreement. The Franchise Agreement could be terminated by the petitioner for convenience as also for default. The petitioner exercising its right under Clause 9.4, terminated the Franchise Agreement. Whether such termination is right or wrong and whether the counter claims raised by the respondents have any merit, are issues to be determined by the Arbitrator to be appointed by the parties in accordance with the Arbitration Agreement. The counsel for the petitioner submits that the petitioner is in the process of ensuring the appointment of an Arbitral Tribunal.

10. In view of the terms of the Franchise Agreement, the petitioner has made out a *prima facie* case in its favour and the balance of convenience also lies in the favour of the petitioner and against the respondents. I, therefore, pass an Interim Order in form of prayer (a) and (b) made in the petition. The Interim Order shall continue for the period as provided under

Section 9(2) of the Act. On the Arbitral Tribunal being constituted, the further continuation/modification/variation of this order shall be decided by the Arbitral Tribunal on application(s) filed by either party, remaining uninfluenced by any observation made in the present order.

11. The petition is disposed of with the above direction and with no order as to cost.

Dasti.

NAVIN CHAWLA, J.

JULY 26, 2018/rv