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

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Date of Order: 29.01.2019

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F.A.O. No.36/2019

M/S DS FOODS & ORS

..... Appellants

Through: Ms.Neha Sonawane, Advocate
with Mr.Arjun Sheoran,
Advocate.

versus

M/S SAGAR RATNA RESTAURANTS PVT LTD & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

C.M. Nos.4311/2019 (for exemption)

1. Allowed, subject to all just exceptions.

F.A.O. 36/2019 & CM No.4310/2019 (for stay)

1. The impugned order dated 27.12.2018 passed by the learned Additional District Judge-02, South District, Saket Courts, New Delhi (ADJ), in a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (Arbitration Act) being ARB No. 269/2018, restraining the appellants from using the trademark 'Sagar Ratna' for a period of 90 days, is the subject matter of challenge in this appeal.

2. The appellant entered into a Franchisee Agreement with the respondent on 06.06.2013 to open a restaurant under the registered

trademark '*Sagar Ratna*' for a period of 10 years at a specific location i.e. 488/99, Main Market, Sector-35, Chandigarh.

3. Due to a change of location by the appellant to run the restaurant, a dispute ensued between the parties. Admittedly, Franchisee Agreement was terminated by the respondent by e-mail dated 20.08.2018.

4. The Franchisee Agreement and arbitration clause are not disputed and the learned ADJ recorded that '*The Franchise agreement has not been disputed and as a corollary, there is no dispute that differences between the parties have to be resolved through the process of negotiations, followed by Arbitration in case of failure of negotiation.*'

5. Admittedly, clause 7.2.1 of the Franchise Agreement provides that '*Either party may terminate this Agreement during the Term if the other party fails to comply with any material undertaking, terms or conditions of this Agreement, so long as such Party has given the other a written notice of such failure and such other Party has not remedied such failure, or has not taken reasonable steps to timely remedy such failure, within a period of forty five (45) days which shall be the cure period specified in the written notice of termination*'. Clause 7.2.2 of the said agreement provides that '*The Franchisor may terminate this Agreement in the event of a breach by the Franchisee of its obligations and covenants with respect to the Licensed Rights and*

the Trade Mark License if such breach is not cured within a period of Thirty (30) days from the date of notice in respect thereof.'

6. Learned counsel for the appellants contend that the respondent failed to provide them with the agreed upon time of 45 days to rectify the breach. Both the learned counsel for the appellants admit the receipt of a letter dated 11.05.2018 from the respondent whereby the respondent informed them about the non-consensual shifting of their outlet to some other location being in breach of the terms of the Franchisee Agreement. The letter dated 11.05.2018 is referred to in the termination notice dated 20.08.2018, which reads '*By our letter dated 11th May 2018 you were advised not to deviate from the terms of the franchise agreement which are already in your knowledge and any such deviation would have resulted in committing the breach of the Agreement which would have resulted into termination of the Agreement.*

We were surprised to know that inspite of our refusal vide our letter dated 11th May, 2018 you have unilaterally taken the decision to shift the outlet to other location which clearly is a material breach of the term of the Franchise Agreement and ultimately results into termination of the Franchise Agreement.'

7. Since the respondent terminated the Franchisee Agreement vide email dated 20.08.2018, *prima facie* it appears that the appellant is not left with any right to use the trademark of the respondent. The respondent has a balance of convenience in its favour being the owner

of the trademark *Sagar Ratna*’ which was allowed to be used by the said Franchisee Agreement dated 06.06.2013 during its life time. If the appellant is not restrained from using the trademark of the respondent, it is the respondent which shall suffer irreparable loss and injury. Therefore, the learned ADJ has rightly injuncted the appellants from using the trademark ‘*Sagar Ratna*’ by the impugned order.

8. Learned counsel for the appellants contend that the respondent has not yet invoked the Arbitration clause despite the impugned order dated 27.12.2018. In terms of Section 9 (2) of the Arbitration Act, the learned ADJ by impugned order, has already directed that ‘*....this order shall be in force only for a period of 90 days within which the petitioner company must take steps in accordance with the arbitration clause of the franchise agreement.*’

9. In view of the above discussion, I do not find any infirmity or illegality in the impugned order. The appeal along with application, being CM No.4310/2019, is dismissed with no order as to costs. Nothing said or observed in this order shall tantamount to an opinion on merits.

(VINOD GOEL)
JUDGE

JANUARY 29, 2019
“*shailendra*”