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

\+ FAO (COMM) 124/2025, CM APPL. 29267/2025 & CM APPL. 32606/2025

M/S PACIFIC HOSPITALITY .....Appellant
Through: Ms. Bhabna Das and Mr. Arpit Kumar Mishra, Advs.

versus

M/S MASSIVE RESTAURANTS PRIVATE LIMITED .....Respondent
Through: Mr. Prateek Kumar, Ms. Aarushi Jain, Mr. Yojit Pareek, Ms. Ankita and Mr. Prashant Kr. Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

ORDER (ORAL)

% 23.07.2025

C. HARI SHANKAR J.

1. This appeal assails an order passed by the District Judge (Commercial) Patiala House Courts[1] in OMP (I) (Comm) 294/2024, preferred by the respondent, as the petitioner, under Section 9 of the Arbitration and Conciliation Act, 1996[2].

2. The learned Commercial Court has, after a detailed order, disposed of the application under Section 9 in the following terms:

"14. Now coming to the prima-facie case under Section 9 of the

[1] "learned Commercial Court" hereinafter
[2] "the 1996 Act" hereinafter

Act for grant of protection during pre-arbitration stage, as prayed by petitioner, the Franchisee Agreement clearly shows that petitioner is the owner of brand 'FARZI Cafe' and petitioner has appointed the respondent be the exclusive franchisee of the franchisor in Hyderabad at the licensed premises for marketing and selling the franchisor's products and services under trade name 'FARZI cafe' during the subsistence of the Agreement. It is evident from documents on record that Franchisee Agreement has already been expired by efflux of time and despite the expiry of Franchisee Agreement and without existence of valid renewal or extension in accordance with the clause 9 of the Agreement, the respondent continued to operate Franchisee under the brand name 'FARZI Cafe' which prima facie constitute breach of provisions of the Agreement. The petitioner has made out a prima facie case in its favour and balance of convenience also lies in favour of the petitioner and against the respondent. In considered opinion, this court, therefore, passed an interim order in the form of prayer (a) and (b) made in the petition. In so far as relief sought in the form of prayer (b) and (c) made in the petition is concerned that may be determined through the arbitration process, no prima facie case is made out and hence rejected."

3. The prayer clause in the Section 9 petition read thus:

"36.A. Prayer:

In light of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a) Grant an interim injunction restraining the Respondent, its agents, representatives, employees, and all persons acting on/under his behalf, from using the Petitioner's brand name Farzi Cafe or any of the Petitioner's trademarks, logos, or other intellectual property;

b) Direct the Respondent to provide security for the unpaid royalties and any other dues that may be determined through the arbitration process;

c) Pass an *ex-parte ad interim* order/ direction restraining the Respondent or any of its officers, assignees, agents or authorised Representatives from alienating any of their properties in tune of the disputed amount.

d) Restrain Respondent from directly or indirectly soliciting any service provider of Petitioner for a period of 12 months, until 23.10.2025 as per Clause 18 of the agreement, and from operating any similar business, in accordance with Clause 19 of the agreement.

e) Pass such other interim measures as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

4. The observation, in para 14 of the impugned order, to the effect that an interim order in terms of prayers (a) and (b) in the petition was being passed appears to be an inadvertent error, as the interim order which has been passed is actually only with respect to prayer (a) in the petition. The impugned order only restrains the appellant from using the name "Farzi Café". The concluding sentence in para 14 of the impugned order makes it clear that the learned Commercial Court is of the view that prayers (b) and (c) in the Section 9 Petition were required to be determined in the arbitral proceedings.

5. Though the appellant has assailed the aforesaid order dated 26 November 2024 passed by the learned Commercial Court in OMP (I) (Comm) 294/2024, Ms. Das submits that the appellant has in fact discontinued use of the mark Farzi Cafe and is not intending to use the said mark any further.

6. In that view of the matter, nothing survives for adjudication in the present appeal, as the impugned order merely restrains the appellant from using the mark "Farzi Café" and the appellant has in

fact discontinued use of the mark.

7. Ms. Das submits that, however, she is contesting the very existence of the arbitration agreement and, therefore, the issue of whether the Section 9 petition could have been maintained at all. This aspect, she submits, is of relevance in a proceeding instituted by the respondent under Section 11(6) of the 1996 Act.

8. In view of the aforesaid facts, we do not find any reason to enter into this aspect.

9. We clarify, therefore, that we are not pronouncing on the aspect of whether there is, or is not, an arbitration agreement in existence between the parties. In case that issue arises between the parties in any cognate proceeding, the parties would be at liberty to urge submissions on the issue as advised, and the concerned Court would not be inhibited in deciding that aspect by this order or by any observation contained in the impugned order passed by the learned Commercial Court.

10. The appeal is accordingly disposed of.

C. HARI SHANKAR, J

OM PRAKASH SHUKLA, J

JULY 23, 2025
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