



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION (LODGING) NO. 25299 OF 2023**

Manoj Agarwal and another ... Petitioners

vs.

Fashion TV Limited, Through Fashion TV India Pvt. Ltd. ... Respondent

Mr. Zal Andhyarujina, Senior Advocate, a/w. Ms. Revati Desai, Mr. Aakash Prasad, Mr. Yash Joshi and Mr. Rishi Murarka for petitioners.

CORAM : MANISH PITALE, J.

DATE : 14th SEPTEMBER, 2023

P.C. :

. By this petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, the petitioners are seeking interim measures in the backdrop of an arbitration clause contained in an agreement dated 29.12.2022 executed between the parties.

2. Mr. Andhyarujina, learned senior counsel appearing for the petitioners invited attention of this Court to various recitals and clauses of the aforesaid agreement dated 29.12.2022, which is titled as F-Spa Franchise Agreement. It was submitted that the recitals in the agreement specify that the franchisee agreement was being executed in favour of the petitioners for the territory of Lucknow. Specific reliance is placed on clause 3 of the said agreement, which, *inter alia*, provides for a First Right of Refusal to the petitioners in respect of the territory of Lucknow, during the currency of the agreement for the period between 01.01.2023 to 31.12.2023. On this basis, it is submitted that if the respondent intended to enter into any franchisee agreement in the territory of Lucknow, the First Right of Refusal clause would operate and the respondent would necessarily have to offer such franchisee to the petitioners.

3. It is submitted that thereafter, the petitioners were in negotiation with the respondent for a franchisee agreement for another location in Lucknow and during the exchange of communications, the petitioners gathered that the respondent had not abided by the First Right of Refusal clause in the agreement dated 29.12.2022. For that purpose, the learned senior counsel appearing for the petitioners relied upon email dated 21.08.2023, where amongst other things, the respondent specifically stated that they have already executed a franchisee agreement. The impression created by the said email was that the First Right of Refusal clause was not abided by the respondent, giving rise to cause of action for the petitioners to approach this Court. It is specifically submitted that unless urgent interim reliefs are granted, the respondent may proceed to execute such franchisee agreements despite the First Right of Refusal clause contained in agreement dated 29.12.2022, which in a manner of speaking, gives exclusive right to the petitioners.

4. The petitioners have served the respondent by way of courier and email. An affidavit of service dated 12.09.2023 has been e-filed, which indeed shows that the respondent was served by email on 11.09.2023, with intimation that the petition would be listed for hearing today before this Court. The documents filed with the affidavit of service also show that the papers were served on the respondent by courier on 12.09.2023.

5. Despite service, there is no appearance on behalf of the respondent.

6. This Court has considered the contentions raised on behalf of the petitioners. The relevant recitals and clauses of the said agreement dated

29.12.2022, read as follows:

Recitals B and C:

- B. FTV has established a substantial reputation and goodwill in the Salon business. The Franchisee recognizes the benefit to be derived and therefrom wishes to run Fashion TV branded Salon using certain registered trademarks of FTV herein referred to as **“Fashion TV”/“FTC”/“F-SPA”** while acknowledging the necessity of confirming in the high standards and specifications of the business.
- C. FTV has decided to license certain trademarks (**Annexure C**) related to the **“Fashion TV”/“FTC”/“F-SPA”** business, including but not limited to know-how and experience to the Franchisee exclusively in order for the Franchisee to develop and acquire the Franchise of the **“Fashion TV”/“FTC”/“F-SPA”** in the territory of **“Lucknow”** (hereinafter referred to as the **“Territory”**)

Clause 3:

3. SUBJECT OF THE AGREEMENT:
- 3.1. This Agreement specifies the rights and duties of the Parties in respect of the running by FTV through the Franchisee, **“Fashion TV”/“FTC”/“F-SPA”** in the Territory and lays down the principles of the use of the equipment or Intellectual Property FTV has made available to the Franchisee for the purpose of this Agreement, and defines the mode of payment by the Franchisee to FTV.
- 3.2. FTV hereby grants the Franchisee during the Term and any Renewal Term thereafter (as defined below) and subject to the Individual Terms for the Operation of **“Fashion TV”/“FTC”/“F-SPA”** attached hereto as **Annexure A** and being an integral part hereof the exclusive right and license to use in the Territory: Lucknow.
- 3.2.1. Trademarks registered (or filed for registration) at the relevant Trademark office for the benefit of FTV, further in **Annexure C**.
- 3.2.2. The IP, inscriptions, advertising slogans, symbols and drawings limited however to running the **“Fashion TV”/“FTC”/“F-SPA”** and any variation thereof;
- 3.2.3. FTV hereby grants the Franchisee option upon the Term

and any Renewal Term thereafter and subject to the Individual Terms for the Operation of **“Fashion TV”/“FTC”/F-SPA”** attached hereto and being an integral part hereof the exclusive right and license to pen **F-SPA(s)** in the Territory as ascribed in Annexure A to this Agreement herein at the time of executing this Agreement. Should the Franchisee in the course of this Agreement intend to open additional F Salon’s, this shall be subject to the Parties entering into a separate Agreement. However, it is provided that no **“Fashion TV”/“FTC”/F-SPA”** will be opened without granting the franchisee a First Right of Refusal in the approval territory starting from 01.01.2023 to 31.12.2023.

- 3.2.4. The **“Fashion TV”/“FTC”/F-SPA”** shall be furnished, constructed, maintained and equipped with rate-cards (to the extent it does not contradict with any government regulations and guidelines), decoration, and setting in a manner acceptable to FTV and consistent with the image of other already operational **“Fashion TV”/“FTC”/F-SPA”** established. Upon completion, the **“Fashion TV”/“FTC”/F-SPA”** will be subject to FTV’s final review/and approval. Franchise shall make its best effort to maximize the commercial success of the **“Fashion TV”/“FTC”/F-SPA”**. The Franchisee undertakes to conduct the business of running the Salon under the name and title as **“Fashion TV”/“FTC”/F-SPA”** using the letter F in diamond device (a logo) of Fashion TV as prescribed in Annexure C.
- 3.2.5. Franchisee’s **“Fashion TV”/“FTC”/F-SPA”** location:
- 3.2.5.1. The **“Fashion TV”/“FTC”/F-SPA”** location of the Franchisee (hereinafter referred to as **“Location”**) i.e. **Lucknow**.
- 3.2.5.2. It is agreed that the rights granted under this Agreement shall be with FROR (“First Right of Refusal”). The Franchisee shall be granted with the right of FROR for the said territory/location of the F-SALON in the Territory in case the Franchisor wishes to open another F-SPA/F-Salon in the Territory.
- 3.2.5.3. It is agreed that the Franchisee’s Location shall be stationary.
- 3.2.5.4. FTV shall provide Franchisee with all necessary guidance, plans, know how, and assistance related to the

interior design of the establishment, the composition of its individual elements, the selection of goods, the sales development, the way of behaviour, and other techniques affecting the overall value of the enterprise.

7. A perusal of the above-quoted recitals and clauses, particularly clauses 3.2.3 and 3.2.5.2, shows that a specific Right of First Refusal in the territory i.e. territory of Lucknow for the period of the agreement, was granted to the petitioners. The effect of the said clauses makes out a *prima facie* case in favour of the petitioners that if the respondent intended to enter into a further franchisee agreement, the petitioners ought to have been first offered such a franchisee and if the petitioners refused to accept the offer, the respondent could engage with third party.

8. There is substance in the contention raised on behalf of the petitioner that the email dated 21.08.2023, gives an impression that despite the First Right of Refusal clause in the agreement, the respondent appears to have executed a franchisee agreement, although no details are forthcoming. The interpretation of the said clause and the extent of territory stated on the part of the respondent in the said email, *prima facie* appears to be in the teeth of the relevant clauses of the said agreement dated 29.12.2022.

9. To that extent, the petitioners have indeed made out a *prima facie* case in their favour for granting ad-interim reliefs.

10. Accordingly, by way of ad-interim direction, the respondent is restrained from entering into any franchisee agreement for the territory of Lucknow, without first making an offer to the petitioners in terms of the First Right of Refusal clause, contained in the aforesaid agreement dated 29.12.2022.

11. List for further consideration on 16.10.2023. The respondents are granted leave to file reply affidavit in the present petition. Such an affidavit shall include disclosure as regards franchisee agreement(s) that may have been executed by the respondent with any third party in the territory of Lucknow.

(MANISH PITALE, J.)

Priya Kambli