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

+ O.M.P.(I) (COMM.) 116/2024

TIPPING MR PINK PRIVATE LIMITED Petitioner

Through: Mr. Jayant Kumar, Advocate.

versus

M/S SAVERA EATS Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **22.04.2024**

I.A. 8559/2024 (*seeking exemption from filing certified/ fair typed copies of annexures*)

1. Exemption is granted, subject to all just exceptions.
2. The Applicant shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.
3. Accordingly, the application stands disposed of.

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4. Although the Respondent has been served with the advance notice on their email ID, as specified in the Franchise Agreement dated 7th January, 2022, there has been no appearance on their behalf¹.
5. The Petitioner, Tipping Mr Pink Private Limited, has filed the instant

¹ It is noted that at a later point in time, an appearance slip was submitted on behalf of the Respondent bearing the names of Mr. Anshul Gupta and Mr. Shubham Kaushik, Advocates. However, in view of the fact that there was no appearance when the matter was taken up and no arguments were addressed on behalf of the Respondent, the said appearance slip has not been accepted.




petition seeking injunction against the Respondent, M/s Savera Eats, restraining them from using the Petitioner's registered "BURGER SINGH" trademarks. The disputes between the parties have arisen in connection to the Franchise Agreement dated 7th January, 2022² executed between them, which contains an arbitration clause at Article 28.3. Accordingly, prior to initiating arbitral proceedings in terms of the Agreement, the Petitioner has invoked the jurisdiction of this Court under Section 9 of the Arbitration and Conciliation Act, 1996³ seeking interim protection.

6. Mr. Jayant Kumar, counsel for Petitioner, has presented the following facts and contentions:

6.1. The Petitioner is engaged in the business of operating fast casual dining restaurants/ outlets under the brand name "BURGER SINGH". In this regard, Petitioner has adopted the trademark "BURGER SINGH" and logo






“”, and on account of their long and continuous use, the Petitioner has garnered significant goodwill and reputation in their trademarks/ trade names. The registration details of the Petitioner's "BURGER SINGH" trademarks under the Trade Marks Act, 1999⁴ are extracted hereunder:

² ("the Agreement")

³ ("Arbitration Act")

⁴ ("TM Act")



Mark	Application No.	Date of Application	Class	Status
	2671832	04.02.2014	43	Registered
BURGER SINGH	2673335	06.02.2014	43	Registered
	4134018	01.04.2019	43	Registered
BURGER SINGH (BIG PUNJABI BURGERS)	4218624	27.06.2019	43	Registered
	2671833	02.02.2014	43	Registered

6.2. On 30th October, 2021, the Petitioner issued a Letter of Intent to Ms. Megha Suraj Gupta, proprietor of the Respondent, for setting up a franchise outlet of “BURGER SINGH” at Saharsa, Bihar. Pursuant thereto, the parties executed the Franchise Agreement dated 7th January, 2022, whereby the Respondent was granted permission to operate a franchise outlet, utilising the Petitioner’s registered trademark “BURGER SINGH”, for a term of ten years from the date of execution.



6.3. The license granted to the Respondent for using the Petitioner’s trademarks was made subject to certain terms and conditions specified in the Agreement, such as Articles 4 and 10, which set out certain obligations of the Respondent, including payment of an administrative fee computed at the rates specified in the aforementioned Letter of Intent. Article 13 of the Agreement sets out the grounds and process for termination of the Agreement by either party. Pertinently, Article 13.3(i) empowers the Franchisor to terminate the Agreement, without cause, by providing a prior written notice of 10 days. Further, Article 14 stipulates the effects of such termination—specifically, Article 14.1 sets out certain obligations that would arise upon receipt of a termination notice under Article 13. The relevant portions thereof are reproduced below:

“14.1. Upon termination of this Agreement for any of the reasons mentioned in Article 13 above, the Franchisee shall immediately and in any event within 2 (two) Business Days from the date of receipt of the Termination Notice:

(a) cease to operate and conduct the Restaurant Business from the Outlet; Provided however, that the Franchisee shall not be relieved of any accrued obligations under this Agreement including any obligation to pay any monetary dues to the Franchisor, as per the terms of this Agreement;

...xxx... ...xxx... ...xxx...

(d) cease to use the Licensed Marks and desist from using any mark confusingly or deceptively similar to the Licensed Marks.”

6.4. In October, 2023, upon noticing that the Respondent was acting in breach of their obligations under the Agreement, the Petitioner issued a show cause notice dated 7th November, 2023, seeking an explanation regarding such breaches and calling upon the Respondent to rectify the same. The Respondent replied to the aforesaid notice on 15th November, 2023, refuting the allegations made by the Petitioner. *Per contra*, they



contended that the Agreement was liable to be terminated at the option of the Respondent. Further, it was contended as follows:

“There are certain issues that should answered by the first part-

- 1. The first part has preferred the legal way for the issues between both the parts without any prior written information and e-mails. Therefore we find date of Show Cause Notice, **Franchisee Obligations and related clauses in the said agreement will be kept on hold till disposal of these issues.**”*

[Emphasis Supplied]

6.5. The above stand reflects that the Respondent has no intention to fulfil their obligations under the Agreement. Therefore, being left with no choice, the Petitioner terminated the Agreement *vide* notice of termination dated 18th December, 2023. In terms of Article 13.3(i) of the Agreement, the termination notice applied with effect from 28th December, 2023, after the expiry of the 10-day notice period. The said termination notice has not been challenged by the Respondent.

6.6. Despite such termination, as per the Petitioner’s knowledge, the Respondent is continuing to operate the franchise outlet under the Petitioner’s registered trademark “BURGER SINGH”. This amounts to infringement of the Petitioner’s statutory rights as well as violation of the Respondent’s obligations, as delineated in Article 14.1 of the Agreement. Moreover, the Petitioner has also received complaints from customers regarding food items supplied by the Respondent. In absence of any contractual relationship between the parties, the Petitioner is no longer able to exercise quality control mechanism on the Respondent’s operations and as such, the Respondent’s activities are causing them loss of reputation and goodwill.

6.7. In such circumstances, the Petitioner has applied under Section 9 of



the Arbitration Act for grant of interim protections. Since the arbitration agreement between the parties specifies New Delhi to be the seat of arbitration, this Court has the requisite territorial jurisdiction to entertain the present petition.

7. The Court has considered the aforementioned factual backdrop. On the basis of the contentions noted above and the documents produced on record, the Petitioner has established their statutory rights over the trademark “BURGER SINGH”, as well as variations thereof. The Agreement executed between the parties formed the foundation for the grant of permission to the Respondent to use the Petitioner’s registered trademarks. Consequently, the termination notice issued by the Petitioner – in accordance with Article 13.3(i) of the Agreement – would have the effect of revoking the authorization conferred upon the Respondent to operate their franchise outlet under the Petitioner’s mark, as well as obligating the Respondent to cease use of the Petitioner’s trademarks and operation of the franchise outlet, in terms of Article 14.1(d) of the Agreement. Accordingly, in the *prima facie* opinion of the Court, the Respondent no longer has any right to continue to use the Petitioner’s registered trademark. Additionally, the stand taken by the Respondent *qua* termination of the Franchise Agreement, as expressed in the aforementioned communication dated 15th November, 2023, reveals a disinclination on their part to act in compliance with the obligations delineated in the said Agreement.

8. In view of the above, the Court finds that the Petitioner has made out a *prima facie* case in their favour and in case no *ex-parte ad-interim* injunction is granted, Petitioner will suffer an irreparable loss. Further, balance of convenience also lies in favour of the Petitioner and against the



Respondent.

9. Accordingly, till the next date of hearing, the Respondent, and/or anybody acting on their behalf, is restrained from using the Petitioner's registered trademark "BURGER SINGH", or any other mark which is identical or deceptively similar to the Petitioner's mark.

10. Additionally, the Petitioner apprehends that the Respondent is likely to remove all evidence and deny their involvement in the infringing activities. Thus, in order to preserve evidence of infringement, the present petition seeks appointment of a Local Commissioner to visit the premises of the Respondent.

11. Accordingly, the following directions are issued:

11.1. Mr. Nikhil Beniwal, Advocate [Contact No. +91 9990095979] is appointed as the Local Commissioner to visit the premises of the Respondent located at:

***Savera Eats, Hotel Grand Savera, Chanakya Puri,
Ward No. 19, Saharsa, Bihar – 852201.***

11.2. The Local Commissioner, along with a representative of the Petitioner and their counsel, shall be permitted to enter upon the premises of the Respondent mentioned above and/or any other location/ premises that may be identified during the course of commission, in order to conduct the search, seizure and inventory.

11.3. The Local Commissioner shall conduct a search at the said premises and seize any infringing material, including hoardings, signs, display boards, operational manuals, catalogues, packaging material, marketing/ promotional material, letterheads, business cards and any other printed material bearing the Petitioner's "BURGER SINGH" trademarks (as represented above), and/or any other mark which is identical or deceptively



similar to the Petitioner's registered marks.

11.4. After seizing the infringing material in terms of the above directions, the same shall be inventoried, sealed and signed by the Local Commissioner in the presence of the parties, and released on *superdari* to the Respondent on their undertaking to produce the same as and when further directions are issued in this regard.

11.5. Further, the Local Commissioner shall be permitted to undertake/arrange for photography/ videography of the execution of the commission. Both the parties shall render full assistance to the Local Commissioners for carrying out the aforementioned directions.

11.6. In case any of the premises are found locked, the Local Commissioners shall be permitted to break open the lock(s). To ensure an unhindered and effective execution of this Order, the Station House Officer (SHO) of the local police station is directed to render all assistance and protection to the Local Commissioner, if and when sought.

11.7. The fee of the Local Commissioner, to be borne by the Petitioner, is fixed at INR 1,50,000/-. The Petitioner shall also bear expenses for travel and lodging of the Local Commissioner and other miscellaneous out-of-pocket expenses for the execution of the commission. Fee of the Local Commissioner shall be paid in advance by the Petitioner.

11.8. The Local Commissioner shall file their report within a period of four weeks from the date on which the commission is executed.

12. List on 6th August, 2024.

SANJEEV NARULA, J

APRIL 22, 2024/nk