IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.29470 OF 2025
IN
COMMERCIAL SUIT (L) NO.29319 OF 2025

Desai Hospitals Ventures LLP & Anr, ...Applicants

IN THE MATTER BETWEEN

Desai Hospitals Ventures LLP & Anr, ...Plaintiffs

Versus

DHI Global Holdings Ltd. (UK) & Ors. ....Defendants

Mr. Ashish Kamat, Senior Advocate with Mr. Harsh Moorjani, Mr. Smeet Savla, Mr. Manas Bhindora and Mr. Anish Sahapurkar i/b M/s. SHS Chambers *for the Applicant/Plaintiff.*

Mr. Mustafa Doctor, Senior Advocate with Ms. Sneha Jaisingh, Ms. Jaidhara Shah, Mr. Manan Parekh and Mr. Vaibhav Guliani i/b M/s. Bharucha Partners *for Defendant No.1.*

Mr. Karl Tamboly with Mr. Zahan Setalvad, Ms. Sneha Jaisingh, Ms. Jaidhara Shah, Mr. Manan Parekh and Mr. Vaibhav Guliani i/b M/s. Bharucha Partners *for Defendant No.3.*

Ms. Sneha Jaisingh with Ms. Jaidhara Shah, Mr. Manan Parekh and Mr. Vaibhav Guliani i/b M/s. Bharucha Partners *for Defendant Nos.2, 4 and 5.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 15 OCTOBER 2025.
DECIDED ON : 17 OCTOBER 2025.

J U D G M E N T :

1. Plaintiffs have filed the present Interim Application seeking stay on

termination notice dated 14 August 2025 seeking to terminate the Master Franchise Agreement dated 1 March 2018 (**MFA of 2018**). Plaintiff has also sought temporary injunction to restrain Defendants from obstructing or interfering with Plaintiffs' performance of MFA of 2018, Territory Assignment and Relinquishment Agreement dated 26 March 2018 and the Assignment and Novation Agreement dated 23 March 2018. Plaintiffs have also sought disclosure against Defendants about execution of any agreement with any entity having effect of obstruction/interference with performance of MFA of 2018, Territory Assignment and Relinquishment Agreement dated 26 March 2018 and the Assignment and Novation Agreement dated 23 March 2018. Plaintiffs have also sought temporary injunction to restrain Defendant Nos.3 to 5 from acting in furtherance of Agreement dated 20 November 2024 having the effect of assigning selling transferring or conveying rights and obligations of Defendant Nos.1 and 2 under MFA of 2018. Plaintiffs have also temporary injunction against Defendant Nos.3 to 5 for establishing business pertaining to Direct Hair Implantation related products and services in the Assigned Territories or from interfering in the Plaintiffs franchise business under MFA of 2018.

2. Brief facts leading to filing of the Suit are stated thus:

Plaintiff No.2 claims to be a reputed Doctor and Plastic Surgeon specialized inter alia in hair transplantation and Plaintiff No.2 is partner of Plaintiff No.1 Limited Liability Partnership **(LLP)**. Defendant No.2 which has been subsequently novated by Defendant No.1 in 2021, has innovated Direct Health Implantation (**DHI system)** and has developed requisite instruments and products and is also owner of intellectual properties relating to DHI system. In the year 2009-2010 Defendant No.2 evinced intention to appoint a Master

Franchise for the territory of India. Defendant No.4 and 5 were engaged in the business inter alia of providing luxury day spa services who are being referred to by Plaintiff as ARS Group. According to Plaintiff ARS group approached Defendant No.2 for securing franchise business from Defendant No.2. Accordingly, a joint venture was formed between Plaintiff, Defendant No.2 and Defendant No.4 vide Memorandum of Understanding dated 29 January 2010 for the purpose of providing hair restoration and allied services in India through Defendant No.3 which incorporated on 25 March 2010.

3. Master Franchise Agreement dated 26 May 2010 **(MFA of 2010)** was executed between Defendant No.2 and Defendant No.3 thereby granting exclusive license to Plaintiff No.1 to operate DHI franchise business in India for 10 years. A Joint Venture Agreement dated 25 June 2010 between Defendant No.4 and Plaintiffs for implementation of DHI franchisee. Differences occurred between Plaintiff and ARS group which laid to execution of Settlement Agreement dated 14 October 2017 between Plaintiffs, Defendant No.3 and Defendant No.5 under which Plaintiffs were granted Territories of Maharashtra, Gujarat, Madya Pradesh, Chhattisgarh, Goa, Orissa, Bihar, and Union Territories of Daman and Diu and Dadra Nagar Haveli **(assigned Territories)** while rest of the India was left with Defendant No.3 and 4. Plaintiffs divested of their shareholding in Defendant No.3 on consideration of Rs.1.82 crores. In accordance with terms of settlement, MFA of 2018 was executed between Plaintiff No.1 and Defendant No.2 on 1 March 2018 for Plaintiff conducting DHI franchise business in the assigned Territories. Plaintiff No.1 agreed to

pay to Defendant No.2 the royalty at the rate of 7% of total amount billed or and realised or 1800 Euros per month whichever was higher. In pursuance of MFA 2018 and for the purpose of giving effect to the Settlement Agreement, Territory Assignment and Relinquishment Agreement dated 26 March 2018 was executed between Plaintiff No.1 and Defendant No.3 under which Defendant No.3 assigned and relinquished Master Franchise Rights in Plaintiffs favour in the assigned Territories on consideration of Rs.20,00,000/- per month. Assignment and Novation Agreement dated 26 March 2018 was executed under which Defendant No.3 assigned all its rights under a Sub-Franchisee Agreement with new touch in Plaintiffs favour.

4. Plaintiff accordingly continued carrying out franchisee business in the Assigned Territories under MFA of 2018 but according to it, ARS group begin interference with Plaintiffs business and made efforts to pressurize Plaintiffs to sale their business. On 1 January 2021 a Novation Agreement was executed by which MFA of 2018 was novated and transferred in favour of Defendant No.1. Plaintiff decided to explore possibility of entire franchise business with Defendant No.3 and franchise between the parties in the above background Plaintiff received letter 17 January 2025 from Defendant No.1 informing it that Agreement dated 20 November 2024 was executed with Defendant No.3 under which all DHI intellectual properties Territories were assignment of Defendant No.3. According to Plaintiff the assignment is illegal and in contravention of MFA of 2018. Plaintiff accordingly protested the assignment by email dated 01 February 2025. In the meantime negotiation for sale of franchise business by Plaintiffs to Defendant No.3 continued and parties exchanged terms. On 29 April

2025 Defendant No.4 wrote to Plaintiffs alleging deliberate under invoicing. However, negotiation between the parties continued.

5. In the above background, Defendant No.1 issued notice dated 14 August 2025 terminating the MFA of 2018 alleging deliberate under invoicing by Plaintiffs for the purpose of lesser royalty and called upon Plaintiffs to pay royalty of Rs.1,80,38,433/- arising out of under reporting during past three years. Plaintiffs send Advocates reply dated 22 August 2025 denying the contents of Termination Agreement. Thereafter correspondence took place between Advocates of parties.

6. Plaintiffs have accordingly filed the present Suit challenging the termination notice dated 14 August 2025 and seeking a declaration that the MFA of 2018 is valid subsisting and binding on Defendants. Plaintiffs have sought permanent injunction against Defendant Nos.3 to 5 from using DHI Intellectual Property, DHI know-how, DHI marks, products or services in assigned territory. Plaintiffs have sought prayer for specific performance of MFA of 2018 in the alternative Plaintiffs have prayed for damages of Rs.50 crores. Plaintiffs have also various other connected reliefs in the Suit. In their Suit Plaintiffs have filed present Interim Application seeking temporary injunction against Defendants as indicated in the opening paragraph of the judgment.

7. Since pleadings in the Interim Application are complete the same is taken up for hearing and disposal.

8. Mr. Kamat, the learned Senior Advocate appearing for Plaintiffs has canvassed following submissions in support of interim application:-

a) That as per Settlement Agreement dated 14 October 2017 and MFA of 2018 Plaintiffs are exclusively entitled to carry on DHI Franchise business in the Assigned Territories.

b) That the IP Assignment Agreement dated 20 November 2024 and IP Assignment dated 12 March 2025 executed by Defendant No.2 in favour of Defendant No.3 is in teeth of negative clauses 9 and 17 of MFA of 2018 which mandated Defendant Nos.1/2 to obtain consent of Plaintiffs before suffering change in ownership or management or before assigning any of the rights or obligations under the MFA to third parties relying on judgment of Apex Court ***Gujarat Bottling Company Limited and others vs. Coca Cola and others***[1], it is contended that such negative stipulation in a contract can be enforced by grant of injunction.

c) That Defendant No.1 therefore did not have locus to issue termination notice dated 14 August 2025 Plaintiff was informed by Defendant No.1 by letter dated 17 January 2025 about Defendant No.3 stepping into the shoes of Defendant No.1 and that therefore termination notice could not have been issued by Defendant No.1.

d) That the termination notice is otherwise illegal as clause 10 of the MFA of 2018 envisages issuance of a cure notice of 30 days which was never issued to the Plaintiff.

1 1995 (5) SCC 545

e) That email 29 April 2025 alleging low volume of business and mistake in reporting of sales issued by Mr. Praveen Agarwal does not constitute cure notice within the meaning of clause 10 of MFA. That Mr. Agarwal has affirmed the pleadings filed by Defendant No.3 in his capacity as a Diirector and therefore it cannot be contended that the email dated 29 April 2025 was issued by Defendant No.1 merely because Mr. Agarwal used email-id of DHI.

f) Even otherwise email 29 April 2025 does not constitute a cure notice as envisaged in the MFA as the same did not provide opportunity to cure alleged defaults within 30 days in support reliance is placed on judgment of this Court ***Maharashtra State Road Development Corporation Limited vs. Plus BKSP Toll Limited***[2]

g) That conduct of Defendants holding negotiations subsequent to issuance of email dated 29 April 2025 would clearly indicate that the said email was not cure notice before termination as envisaged clause 10 of the MFA.

h) That false allegation of under reporting is levelled in the impugned termination notice based on leaked Whatsapp messages by disgruntled ex-employee of Plaintiffs who has joined the Defendants. That there is no under reporting of sales by the Plaintiff. That Whatsapp messages show complete packages offered/agreed with the patients and not only DHI related work. That as per clause 5(h) of MFA of 2018 read with definition of term "business" Plaintiffs have

2 2021 SCC Online Bom. 607.

discretion in the matter of selection and opening of clinics for conduct of business in the Assigned Territories and to negotiate fees. That packages so offered included several other non-DHI related services as demonstrated in para 24 of the Rejoinder. That even otherwise Defendant No.1 has referred to pending forensic audit pertaining to accounts of Plaintiffs meaning thereby that there is no concrete material to infer under reporting.

i) That the amount of Rs.25 crores claimed as loss of revenue forms over all claim pertaining all Assigned Territories and prospective sales and the same is not an indicator of what Plaintiffs must have earned in the past.

9. On above broad submissions Mr. Kamat would pray for making Interim Application absolute in terms of prayers made therein.

10. Mr. Doctor the learned Senior Advocate appearing for Defendant No.1 would oppose the Interim Application by canvassing following submissions:

a) That Suit is bad for misjoinder of causes of action against multiple Defendants. That Suit challenges termination of MFA of 2018 and seeks specific performance thereof. However Plaintiff has also challenged Agreement dated 20 November 2024 executed between a Company named Dexpo Intellectual Properties Services Limited **(Dexpo)** and Defendant No.3 by which Dexpo has transferred DHI IP to Defendant No.3. That these separated and unrelated causes of action which cannot be combined in one suit. That they are deliberated combined to seek a escape from Arbitration Agreement under the MFA of 2018.

b) That MFA of 2018 is terminated by notice dated 14 August 2025 on account of deliberate misreporting of sales by Plaintiffs with the object of non-payment of royalty to Defendant No.1. That notice contains figures of actual sales of Mumbai clinic of Plaintiff No.1 as opposed to the sales reported by it to Defendant No.1.

c) That under reporting of sales by Plaintiffs is evidenced by Whatsapp chat produced by Defendants alongwith Affidavits in Reply.

d) Plaintiffs have not disputed genuineness of the Whatsapp chat and have admitted the fact that the same relate to Whatsapp group created by Plaintiff No.2 for convenience of operation in Mumbai clinic.

e) Plaintiffs' attempt to explain discrepancies in figures mentioned in Whatsapp chart and its invoices is unacceptable. That they have put forth baseless pretexts such as offering of non-DHI related services to patients which is belied by express language of Whatsapp messages referring to the amounts towards DHI treatments alone. That Plaintiffs rejoinder contains admissions of under reporting of sales on account of putting forth excuses such as non-issuance of invoices to various patients or acceptance of cash amounts.

f) That Plaintiffs own claim for damages for Rs.25 crores for loss of business is indicative of possible earning out of DHI franchisee business which figure is way higher than the sales figures reported by Plaintiffs during 2022-23 to 2024-25.

g) That there is no necessity of issuing any cure notice in a case involving fraudulent conduct and in support reliance is placed on judgment of this Court in ***Bharat Petroleum Versus M/s Jethanand Thakurdas Karachiwala and others***.[3] That when contract is repudiated, no cure notice is necessary and in support reliance is placed on judgment of Andhra Pradesh High Court in ***Navyauga Machilipatnam Port Limited Versus. State of Andra Pradesh and others.***2022 Online 2125.[4]

h) Even otherwise cure notice was issued to Plaintiffs on 29 April2025 alleging under reporting of sales which was not replied by the Plaintiffs.

i) Without prejudice it is contended that non-issuance of cure notice would at the highest give rise to claim for damages and Plaintiffs cannot be compelled to perform MFA of 2018 by way of interim injunction.

j) Plaintiffs challenge to IP Agreement dated 20 November 2024 as in the teeth of MFA of 2018 is misconceived as clause 9 of the MFA of 2018 relates to change in control in relation to franchiser whereas IP Agreement relates to transfer of IP property owned by another Company (Dexpo).

11. On above submissions, Mr. Doctor would pray for dismissal of the Interim Application.

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3 1998 SCC Online Bom 320.
4 2022 SCC Online AP 2125.

12. Mr. Tamboly, the learned counsel appearing for the Defendant No.3 would also oppose the Interim Application and in addition to submissions of Mr. Doctor, would canvass following submissions:-

a) That specific performance of MFA of 2018 cannot be granted in Plaintiffs favour in view of the provisions of Section 16 of the Specific Relief Act, 1963 as Plaintiffs have acted with fraud of the contract as well as has acted willfully at variance with the contract. That conduct of Plaintiffs as disclosed from comparison of invoices Whatsapp chats tantamounts an act of fraud of contract disqualifying Plaintiffs from obtaining specific performance.

b) Plaintiffs stand in the Rejoinder explaining inconsistencies in invoices as compared to Whatsapp chat is after thought and unacceptable as the instances involved in non-DHI services contain separate reference to Whatsapp chat.

c) Plaintiffs were put to notice about discrepancies on 29 April 2025 itself.

d) That termination notice has been issued with due authorization as Defendant No.1 has executed power of attorney dated 12 March 2025 in favour of Defendant No.3 who is authorized to issue notice dated 29 April 2025.

e) That in view of objection and challenge to IP Assignment Agreement dated 20 November 2024 and settled law in ***Kapilaben and others Versus. Ashok Kumar Jayantilal Sheth through POA Gopalbhai Madhusudan Patel and others***[5], the Franchise has rightly terminated MFA of 2018 vide impugned termination notice.

5 2020 (20) SCC 648

f) That term sheet was issued without prejudice to the rights of parties and that therefore continued negotiations does not amount to waiver of notice of Defendant. On above submissions Mr. Tamboly would pray for rejection of the Interim Application.

13. Rival contentions of the parties now fall for my consideration.

14. Plaintiffs are essentially aggrieved by Defendant No.1 terminating the MFA of 2018 under which they have secured exclusive license from Defendant No.1 for 10 years for operating DHI franchise business of providing hair restoration and allied services through its clinics in the Assigned Territories. The earlier MFA of 2010 was executed in favour of Defendant No.3 who was a Joint Venture between Plaintiffs and Defendant Nos.3 and 4. Owing to the disputes between Plaintiffs and ARS Group, they have parted ways by executing Settlement Agreement dated 14 October 2017 under which Plaintiffs have given up their shareholding in Defendant No.3-Company upon receipt of consideration of Rs.1.82 crores and in return have secured exclusive right to do DHI Franchise business of Defendant Nos.1 and 2 in the Assigned Territories of Maharashtra, Gujarat, Madhya Pradesh, Chhattisgarh, Goa, Orissa, Bihar, Daman Diu & Dadra Nagar Haveli. Rest of the India has remained with Defendant Nos.3 and 4. On account of settlement between Plaintiffs and Defendant Nos.3 and 4, Defendant No.2 executed a fresh Master Franchise Agreement dated 1 March 2018 in favour of Plaintiffs for a tenure of 10 years in respect of assigned territories. Under the MFA of 2018, Defendant No.2 granted in favour of Plaintiffs exclusive license for a period of 10 years in providing hair restoration and allied services

through its clinics with further right and identify and engage various clinics to undertake promote and develop the business through execution of sub-franchise agreements in the assigned territories. Under the Agreement, Defendant No.2 agreed to provide training, expertise, consultation, marketing, DHI know-how, licensing of DHI marks, provision of DHI certified documents, referrals etc. to the Plaintiffs. Under the Agreement, Defendant No.2 is entitled to royalty of 7% amount of total amount billed and realised from the business from all clinics in the territory or Euro 1800 per month, whichever was higher. Clause-6.1 of MFA dealt with royalty and reads thus :-

> **6.1. Royalty:** The Franchiser shall be entitled to a Royalty of 7% of the total amount billed and realized from the Business by all Clinics in the Territory or Euro One Thousand Eight Hundred (1800€) per month whichever is higher, shall be paid by the Franchisee to the Franchiser subject to compliance with applicable laws of the said Territory as applicable.
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> Such payment of Royalty shall be paid quarterly in the beginning of each quarter and the difference if any will be invoiced at the end of each quarter. Further, in consideration of the above mentioned Royalty payment, Franchiser agrees to provide new developments (if any) in relation to the DHI Know-How/DHI Marks to the Franchisee as long as the Franchisee exists without any extra cost.

15. Since clause-1.1 of MFA of 2018 refers to the term 'Business', it would be apposite to reproduce definition of the term Business under Clause-1.1 which reads thus:-

> **"Business"** shall mean the business of providing hair restoration services using especially developed instruments and products;

16. Simultaneously with execution of MFA of 2018, Plaintiff Nos.1 and 2 have also executed Territory Assignment and Relinquishment Agreement dated 26 March 2018 under which Defendant No.3 assigned and relinquished the DHI Franchise rights in Plaintiff's favour

in consideration of Rs.20 lakhs. Similarly, a Sub-Franchise cum Novation Agreement is executed between Plaintiff-Defendant No.3 and one Cosmetic Plastic Surgery and Laser Super Specialties (CPSLSS) under which Plaintiff No.1 stepped into the shoes of Defendant No.3 as a sub-franchiser for CPSLSS. Similarly, Assignment and Novation Agreement dated 23 March 2018 was executed under which Plaintiff No.1 is assigned all rights of Defendant No.3 in respect of sub-franchise of New Touch.

17. This is how Plaintiffs and Defendant Nos.3 and 4 separated their businesses relating to provision of hair transplantation services and other related services. In the meantime, Defendant No.1 has stepped into the shoes of Defendant No.2. and accordingly MFA of 2018 has been novated and transferred in favour of Defendant No.1 vide Novation Agreement dated 1 January 2021. This is how the MFA of 2018 continued between Plaintiffs and Defendant No.1.

18. According to Plaintiffs despite separation of businesses, ARS Group kept on interfering with Plaintiffs business in the Assigned Territories and was pressurizing them to sell the Franchise Business in the Assigned Territories to ARS Group. In this background, Defendant No.3 has acquired intellectual property rights associated with DHI brand from Dexpo vide Agreement dated 20 November 2024 in respect of India territory. This is how the business rival of Plaintiffs (Defendant No.3 part of ARS Group) has acquired IP rights in respect of DHI brand of Defendant No.1. According to Plaintiff this agreement dated 20 November 2024 executed between Defendant No.3

and Dexpo is in the teeth of clauses-9 and 17 of the MFA of 2018. In prayer clause (g) of the Plaint, Plaintiffs have challenged the IP Agreement dated 20 November 2024. The said Agreement is however executed between Dexpo and Defendant No.3 and Dexpo is not a party to the suit and it is questionable at this stage as to whether the issue of validity of IP Assignment Agreement dated 20 November 2024 can be determined in absence of Dexpo's impleadment to the Suit. Plaintiffs have not sought any temporary injunction in respect of IP Assignment Agreement dated 20 November 2011. However, it is contended by Mr. Kamat that acquisition of IP rights by Defendant No.3 in DHI brand is the overarching reason why ARS Group has terminated the MFA of 2018 by citing flimsy pretext. This is a reason why the IP Assignment Agreement dated. 20 November 2024 is also challenged by the Plaintiff in the Suit. Since Plaintiffs claim that the IP Assignment Agreement violates Clauses-9 and 17 of the MFA, the said clauses are reproduced below :-

> **9. Change of Control:**
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> In the event of: (i) Franchiser suffering a change in ownership or management, Franchiser shall ensure that the new management continues to ensure Franchiser's compliance with the terms hereof, or (ii) Franchiser desiring to transfer or assign its rights and obligations under this Agreement to any third person transferee, Franchiser shall take prior consent of the Franchisee
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> **17. Non-Assignment :**
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> Neither Party shall, nor shall purport to, assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Agreement nor grant, declare, create or dispose of any right or interest in it, or sub-contract the performance of any of its obligations under this Agreement in whole or in part (otherwise than pursuant and in accordance with the terms of this Agreement) except with the written consent of the other party.

19. Careful perusal of clauses 9 and 17 would indicate that prior consent of Plaintiffs was necessary in the event of Defendant Nos.1/2 suffering change in ownership (in which case new management was to continue to ensure franchiser's compliance with MFA of 2018) or in the event of franchiser desiring to go transfer or assign its rights and obligations under the MFA of 2018 to a third person, consent of Plaintiffs was necessary. So far as Clause 17 of MFA of 2018 is concerned, the same put an embargo on assignment of rights or obligations under the Agreement without written consent of other party. What is done by way of IP Assignment Agreement dated 20 November 2024 is merely assignment of DHI IP rights by Dexpo in favour of Defendant No.3. The IP Assignment Agreement prima facie does not seek to transfer the rights or obligations of Defendant Nos.1/2 in favour of Defendant No.3. as a matter of fact, the said Agreement is not even executed by Defendant Nos.1/2. Therefore, the contention of Plaintiffs that the overarching reason of termination of MFA of 2018 is acquisition of DHI business by Defendant No.3 from Defendant Nos.1/2 prima-facie cannot be accepted. Therefore, it is not necessary to discuss the ratio of the judgment of the Apex Court in ***Gujarat Bottling Company Limited*** (supra) dealing with the issue of injunction for enforcing negative stipulation in a contract.

20. Coming to the merits of termination notice dated. 14 August 2025, Cls-7, 8, 9, 9A, 9B, 9C,11,10 and 12 read thus:-

> 7. On 28 April 2025, we forwarded to SHSPL, the sales reports sent by you to us for January, February and March 2025 for calculating

the royalty payable by you for those months. However, SHSPL found that the sales reported by you to us were significantly lower than the sales numbers given by you to SHSPL for determining the Fair Consideration. SHSPL, under copy to us, wrote an email to you on 29[a] April 2025, expressing grave concern about this huge anomaly in sales reported by you for royalty calculation and the sales numbers mentioned by you to SHSPL for calculating the Fair Consideration. You had an opportunity to explain these discrepancies but you did not provide any explanation for such hugely suppressed sales reported by you. Your misrepresentations an subsequent failure to respond or provide any explanation at all, constitutes a continuing Event of Default under clause 10.2 of the MFA and a failure to cure this breach, respectively. Your conduct ex facie demonstrates that you have no intention of complying with your obligations under the MFA. Moreover, your failure to make payment of royalties in accordance with Clause 6 of the MFA, including your continued failure to pay royalties from January 2025 till date, and report sales figures from April 2025, go to the root of the MFA and constitute a material and fundamental breach thereof.

8. This led us to investigate the sales reported by you in the past few years, correlating it with information available with us, and information that we requested SHSPL to provide us.

9. We have now discovered that for the period October 2024 to March 2025, you have reported only 22% of actual sales at Mumbai clinic for the purpose of paying royalty. While the actual sales during this period from one clinic in Mumbai alone was INR 30,016,933, you deliberately and fraudulently misrepresented sales and reported only INR 6,634,068 sales from Mumbai clinic. The details are given below.

Month	Actual sales of Mumbai clinic	Mumbai sales reported to the Franchisor	Under-reported sales	Reported sales as %
Oct 2024	30,79,326	12,95,000	-17,84,326	42%
Nov 2024	40,83,115	8,95,000	-31,88,115	22%
Dec 2024	74,71,101	13,90,000	-60,81,101	19%
Jan 2025	46,05,086	9,77,373	-36,27,713	21%
Feb 2025	41,40,169	8,46,695	-32,93,474	20%
Mar 2025	66,38,136	12,30,000	-54,08,136	19%
Total	**3,00,16,933**	**66,34,068**	**-2,33,82,865**	**22%**

9. This is further corroborated by the following facts:

a) After signing the MFA, you have been purchasing the instruments and consumables required for performing DHI Procedures/Sessions from SHSPL. We recently discovered and obtained the data relating to purchases made by you from SHSPL. in 3 years starting from April 2022 till March 2025. This data shows that you have purchased 2,100 oblong pink cloths and 1,585 extraction punches, as evidenced by the summary of invoices enclosed in Annexure 1. As you well know and as is well This data shows that you have performed at least 1,585 Sessions oblong and next compared to one hair transplant this, you have reported only 507 Sessions in the same period, from 4 clinics in Mumbai, Pune, Ahmedabad and Nagpur. Eight years back, during the period 2015 to 2017, when you were a sub franchisee of SHSPL, one Mumbal clinic alone reported 630 Sessions in 3 years versus only 336 Sessions reported by you for Mumbai clinic in the last 3 years.

b) The Average Session Price ("ASP") of the 507 Sessions reported by you in 3 years is only INR 127,067. During the period from January 2022 till March 2024, SHSPL reported ASP of INR 228,258. Therefore, the ASP reported by you in last 3 years is almost half of the ASP reported by SHSPL, which also operates clinics in rest of India. Even 8 years back, during the period January 2015 to December 2017, when you were a sub-franchisee of SHSPL., you reported ASP of INR 249,752. The details of sales reported by you, number of sessions, ASP, and comparison is given in Annexure 2.

c) From this data, and pending a forensic audit of your accounts and operations, we have concluded that you have performed 1,585 hair transplant sessions at ASP of INR. 228,258 during the last 3 years, ie. total sale of INR 361,788,489, as compared to the reported sales of INR 64,422,975 during the same period. As per this data, you have reported only 18% of actual sales during last 3 years.

10. In the circumstances, and pending a proper and detailed forensic audit of you accounts and operations, it is ex facie evident that you have willfully, deliberately and fraudulently reported only 20% of actual sales in last 3 years. Since you have reported sales of INR 64,422,975 in last 3 years, the quantum of unreported sale is INR

257,691,902, and the underpaid royalty on such suppressed sale is INR 18,038,433.

11. As set out above, you have also failed to (a) pay royalties from January 2025, till date; and (b) report any sales figures from April 2025, in material and fundamental breach of your obligations under the MFA. Resultantly, we have suffered losses of due royalties on INR 15,383,391 (from January to March 2025) and unknown amounts (from April 2025 till date).

12. It is evident that you have been deliberately, willfully and fraudulently suppressing and concealing disclosure of full sales from the Business and under paying the royalty under the MFA in breach of clause 6.1 of the MFA. Despite being notified as far back as in April 2025, your conduct demonstrates that you never had any intention of complying with the terms of the MFA, and despite being put to notice, you have not only failed to make any attempt to cure these breaches, which go to the root of the MFA, but you have also failed to respond. In the circumstances, we are constrained to terminate the MFA with immediate effect. Accordingly, all your rights under the MFA stand terminated and extinguished with immediate effect.

21. Thus, the MFA of 2018 has been terminated by Defendant No.1 alleging under reporting and suppression of sales by Plaintiff during past 3 years. As observed above, clause-6.1 of the MFA of 2018 required Plaintiffs to pay royalty at 7% on total amount billed and realized from the business from all clinics in the territory to Defendant No.1/2. According to Defendant No.1, Plaintiffs had done 1585 hair transplant sessions during past 3 years involving total sales of INR 36,17,88,489/- as against reported sales figure of 6,44,22,975/-. According to Defendant No.1 only 20% of actual sales during past 3 years was reported by plaintiffs and the quantum of unreported sales is Rs.25,76,91,902/- and underpaid royalty on such suppressed sales is Rs.1,80,38,433/-.

22. This is not the first time that the allegation of under reporting of sales was raised against Plaintiffs. On 29 April 2025, Mr, Pravin Agarwal of Defendant No.4 had sent email to the Plaintiff making reference to transfer of IP rights in DHI brand for India in favour of Defendant No.3 and in that email allegation of under reporting of sales was expressly raised. Plaintiffs have not denied receipt of email dated 29 April 2025. Curiously, Plaintiffs chose not to respond specific allegation of under reporting of sales despite receipt of email dated 29 April 2025. The response of the Plaintiffs now is two-fold, (i) the charges levied on the patients by plaintiffs include various other charges apart from DHI services and royalty on such charges was not required to be shared with the Defendant No.1 and (ii) the allegation of under reporting is based on erroneous information provided to the Defendants by disgruntled ex-employee of plaintiffs who have now joined the Defendants.

23. So far as the first response of the Plaintiffs is concerned, the relevant pleadings in the rejoinder are to be found in paras-24 and 25 which are as under :-

> 24. On the basis of WhatsApp messages leaked by Mr. Pritam Kadam, the Defendants allege that the actual fees charged to a particular patient was much higher as compared to what was reported by the Plaintiffs to the Defendant Nos. 1/2. The WhatsApp messages demonstrate the name of the patient, his age, the treatment, the area, the tenure, the date and the package offered / agreed with the said patient for the services requested by the said patient. It is pertinent to note that the package so agreed / offered by the Plaintiffs included DHI related services, non DHI related hair treatment services such as Platelet-Rich Plasma (PRP) Growth Factor Concentrate (GFC), Stem-Cell based therapies such as adipose-derived stem-cell (ADSC) therapy and umbilical cord cells,

Exosomes to deliver growth factors, microneedling to stimulate healing, low-level laser therapy (LLLT) to activate follicles, and fat derived stem-cell treatments, etc. The package also included the bed charges, nursing charges, disposable item charges, surgical consuables, admission and registration fees, medicines, etc. The Defendants are falsely attempting to portray that the entire package was DHI related work. As per the MFA of 2018, the Plaintiffs were required to identify and engage various clinics in the assigned territories to undertake, promote and develop DHI business by executing sub-franchise Agreements. The clinics operated by the Plaintiffs do no render DHI related services exclusively. Such clinics also provide hair treatment services which do not pertain to DHI technology. As per the MFA, the Plaintiffs had the absolute discretion in the matter of selection and opening of clinics, for conduct of the business, the fee and pricing arrangements of the services to be rendered, etc. Further, the Plaintiffs were liable to pay royalty of 7% of the total amount billed and realised from the DHI business by all clinics or 1800 Euros per month whichever was higher to the Defendant Nos. 1 and / or 2. Such payment was to be paid quarterly at the beginning of each quarter. The Plaintiffs have complied with such terms of the MFA of 2018 and have always reported true and correct sales to the Defendant Nos. 1/2.

25. The Mumbai clinic of the Plaintiffs exercised such discretion as available to the Plaintiffs under the MFA of 2018 to maximise sales and to develop DHI related business and to render several hair treatment services to patients under one clinic. The patients found it more convenient and conducive to avail lumpsum packages for their treatment as compared to invoice-based charges. Several patients, especially celebrities, requested the Plaintiffs not to issue invoices with particulars of the hair treatment service to maintain confidentiality and avoiding disclosure of hair related issues of the patients. In such cases, the patients only requested for receipt of the amount paid by them for availing hair treatment services. Mr. Pritam Kadam is aware of such patients and the dealings with them. Mr. Pritam Kadam is aware that such package as stated in the WhatsApp messages is for the entire treatment and the clinic charges which include DHI related work. The said practise has been adopted and continued by the Plaintiffs with the Defendant Nos. 1/2 since the past 6 to 7 years. The Defendant Nos. 1/2 did not raise any objection or concern with regard to underreporting of sales in the Mumbai clinic. The said conduct of Mr. Pritam Kadam in collusion with the Defendants is malafide and mischievous. Mr. Pritam Kadam ought to have informed the Plaintiffs about the invoicing and payment system of the Plaintiffs with respect to its Mumbai clinic. Pertinently there are no allegations raised by the Defendants for the Pune clinic operated by the Plaintiffs.

24. Plaintiffs have also relied on definition of the term 'Business' in Clause-1.1 of the MFA of 2018 in support of the contention that the royalty was payable to Defendant No.1 only in respect of business of providing hair restoration services using instruments and products of Defendant No.1. According to Plaintiffs, the patients have availed several non-DHI related hair treatment services such as platelet-rich plasma (PRP), growth factor concentrate-(GFC), stem cell based therapies etc. and the packages offered to the patients included bed charges, nursing charges, disposal item charges, surgical consumables, admission and registration fees, medicines etc. which do not form part of DHI related work.

25. Defendants have placed on record a comparative chart of invoices raised by Plaintiff on various patients by just posing the same against Whatsapp messages relating to same patient. The said chart would indicate that there is a vast difference between the invoice amount and the actual amount charged to the patients. To illustrate, patient Mr. Rahul Shirke is apparently charged Rs.4,00,000/- for DHI and Rs.15,000/- for PRP, whereas the invoice in respect of the said patient is only for Rs.1,18,000/- including GST. Notably, the Whatsapp message indicates sperate charges for DHI (Rs.4 lakh) and PRP (Rs.15,000/-) thereby belaying false defence taken by Plaintiff in the Rejoinder. Similarly is the case of another patient, Dr. Chirag Desai who is charged package of Rs.2,30,000/- for DHI and Rs.15,000/- for PRP but the invoice amount is only for Rs.1,18,000/-

inclusive of GST. There are several such instances where plaintiffs have grossly under invoiced the services as compared to the charges recovered from the patients. There is thus sufficient prima-facie material to assume correctness of allegations in the termination notice. Also of relevance is the fact that while vaguely contending that the concerned patients were provided non-DHI related services, Plaintiffs have not produced any proof to support the said claim in the form of invoices for non DHI related services.

26. Plaintiffs have claimed amount of Rs.25 crores towards 'estimated earnings of the plaintiffs under the Master Franchise Agreement dated 1 March 2018 for next three years.' As against Plaintiff's claim of potential earning of Rs.25 crores in the next three years, the sales figures reported by them to the Defendants during past three years is miniscule. Annexure-2 to termination notice indicates that sales figure reporting by Plaintiffs during past three years are as under :-

2022-23 : Rs.2.12 crores

2023-24 : Rs.2.50 crores

2024-25 : Rs.1.81 crores

The above figures would again indicate gross under reporting of sales by Plaintiffs when compared to its own estimate of earnings in next three years. The above figures when compared to the sales figures reported by Defendant No.3, when it operated as J.V. of Desai Group and ARS Group during 2015-17 were as under :

2015 : Rs.6.68 crores

2016 ; 6.21 crores

2017- 5.88 crores

The above figures of Defendant No.3 may be for whole of India but even if 50% of the said figures is taken into consideration, still under reporting by Plaintiffs is writ large. What is also relevant is the comparison of average session price reported by plaintiffs during past three years of Rs.127067/- when infact the same was Rs.2,28,258/- during 2015-16 when Plaintiffs were in joint venture with ARS group.

27. I am therefore convinced that Plaintiffs have indulged into gross act of under reporting of sales with a view to avoid liability to pay 7% royalty to Defendant No.1. Therefore, the reason for termination of MFA of 2018 is prima-facie found to be valid.

28. Faced with the difficulty of inability to deal with the allegations of under reporting of sales, Plaintiffs have raised the plea of termination being bad for failure to issue cure notice under Clause 10.1 of the MFA of 2018. Clause-10 of the MFA deals with termination. Clauses-10.1 and 10.2 read thus :-

> **10.Termination**
>
> **10.1** Any party may terminate this Agreement upon the following conditions:
>
> (i)the failure on the part of the other party to cure an Event of Default within thirty (30) days, as elaborated in Subparagraph 10.2
>
> (ii) in event of any Force Majeure, as elaborated in Subparagraph

> 10.3 continuing to exist for more than sixty (60) days.
>
> **10.2** An **"Event of Default"** will occur if either party fails to satisfy or comply with any of the obligations, requirements, conditions, or terms set forth in this Agreementor any attachment to this Agreement; An Event of Default will also occur in case of any misrepresentations made by either party, whether in > entering into this Agreement, or in performing its obligations in pursuance to the MFA. It shall be deemed as an Event in default if any act materially diminishes the Franchises ability to operate in accordance with this MFA.

29. Thus, upon occurrence of event of default the Agreement was terminable only if the other party failed to cure the event of default within 30 days. According to Plaintiffs, even if it is assumed that any default was committed by Plaintiffs, it was entitled to cure notice of 30 days before termination. According to Plaintiffs they were entitled for an opportunity to cure the default within a period of 30 days. Having held that Plaintiffs have prima-facie committed gross act of suppression of sales figure with ulterior motive of avoiding to pay due royalty to Defendant No.1, I am not really impressed by the argument that the termination notice must be stayed for technical reason of non-issuance of cure notice. It is another matter that Plaintiffs were specifically warned by email dated 29 April 2025 that they were grossly under reporting sales. The relevant part of email dated 29 April 2025 reads thus :-

> We are surprised to see extremely low volume of business. You have reported only 9 sessions in Mumbai for a total sale of only INR 8.46 lakhs in February at an average price of only INR 94,000 per session. This is at average price of INR 16.5 per hair only. Further, no sales have been reported in Pune, Ahmedabad and Nagpur clinics in February.

> Even in the month of March 2025 you have reported only 14 sessions in Mumbai and 2 sessions in Pune for a total sale of INR15.75 lakhs only. Again the value reported is extremely low l.e. INR 98K per session and per hair price of only INR 14.4.
>
> This is totally contrary to the indicative numbers you have been sharing with us for the purpose of our buying out the Western India territories, as per which the sales should be at least 8 to 10 times more than what has been reported.
>
> It seems that there has been some mistake in reporting the sales. We request you to please review and report the correct sales to us by 30th April 2025 so that we can raise an invoice for the correct amount of of royalty.

30. Plaintiffs were thus put to clear notice that they were under reporting the sales on 29 April 2025 itself. Plaintiffs have taken a defence that email dated 29 April 2025 was not an opportunity to cure the default and that in any case the same was issued by Mr. Pravin Agarwal of Defendant No.4 and not by Defendant No1. I am not impressed by both the defences at this stage. The email clearly requested Plaintiffs to review and report correct sales upto 30 April 2025 for the purpose of raising an invoice for correct amount of royalty. Thus, clear opportunity of curing the default was given in the said email. Plaintiffs chose not to respond to the said email. They did not dispute the allegation of under reporting of sales nor cured the default. So far as the author of the email is concerned, the email refers to obligation on the part of Plaintiffs to report sales figures and to pay royalty to Defendant No.3 under the MFA. This is clear from following contents of the email.

> You were also informed that from 1st February 2025 you have to report sales and pay royalty to Silvermaple as per the Franchise agreement. We have just received the sales report for February and

March 2025 from DHI Global for your territories, a summary analysis of which is enclosed.

31. At this stage it is not necessary to go into the issue of entitlement of Defendant No.3 to receive royalty under the MFA of 2018 . Suffice it to observe that Plaintiff was put to a specific notice that it was under reporting the sales and was also given an opportunity to cure the default. In that view of the matter, reliance by Mr. Kamat on judgment of this Court in ***Maharashtra State Road Development Corporation*** **(supra)** in apposite. Even otherwise, the judgment has been rendered by taking into consideration the facts of this case as noted in paragraph-72 and the judgment cannot be cited in support of an abstract proposition that in every case failure to issue cure notice must render termination invalid.

32. I have already observed the conduct of Plaintiffs in grossly suppressing the correct sales figure with oblique objective of non-payment of due royalty to Defendant No.1. Plaintiff is seeking specific performance of MFA of 2018. Under Section 16 of the Specific Relief Act, specific performance of a contract cannot be enforced in favour of a person who has acted in fraud of the contract or has acted in willful variance with the contract. Section 16 of the Act provides thus :-

> **16. Personal bars to relief.** -Specific performance of a contract cannot be enforced in favour of a person-
>
> (a) who has obtained substituted performance of contract under section 20; or
>
> (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at

variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to prove] that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation. For the purposes of clause (c), -

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court;

(ii) the plaintiff [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.

33. In the present case, conduct of the Plaintiffs in grossly suppressing sales figures would prima-facie amount to an act in fraud of contract, as well as an act in willful variance of the contract. The MFA of 2018 is a business arrangement executed for the purpose of earning royalty by Defendant Nos.1/2 for use of the technology developed by them for hair transplant related services. If an entity who is permitted to use such technology in lieu of payment of royalty reports false figures of sales for the purpose of avoiding payment of due royalty, such an act would clearly constitute an action of fraud in contract as well as an action at willful variance with the contract. Once it is held that Plaintiff is unlikely to secure specific performance of MFA of 2018 even at final stage, there is no question of staying the termination notice for technical reason of non-issuance of cure notice strictly in accordance with Clause-10.1 of the MFA of 2018.

34. Even otherwise even if Plaintiffs succeed in proving that failure to issue cure notice renders termination invalid, the same would

be a ground to claim damages and not specific performance considering the provisions of Section 16 of the Specific Reliefs Act. Therefore, Plaintiff can be compensated by awarding damages in case it succeeds in demonstrating that cure notice is actually not given strictly in accordance with Clause-10.1 of the MFA of 2018 or that non-issuance of the notice renders termination invalid. Reliance by Mr. Doctor on judgment of this court on ***Bharat Petroleum Corporatiuon limited*** (supra) in this regard is apposite. The judgment of Andra Pradesh High Court in ***Navyauga Machilipatnam Port Limited*** (supra) deals with the issue of repudiation of contract and may not strictly apply to the facts of the present case.

35. Plaintiff's contention that the default indicated in email dated 29 April 2025 got waived on account of subsequent negotiations between the parties does not deserve acceptance. It is Plaintiff's own case that Defendant Nos.3 and 4 have been pressuring them to sell the franchise business for quite some time. Therefore, if under reporting by Plaintiffs was noticed by the Defendants and if on that count, sale of business by Plaintiff was being contemplated, it cannot be contended that holding of negotiations meant in favour of default indicated in email dated 29 April 2025.

36. It is contended on behalf of the Plaintiffs that Defendant No.1 does not have locus to terminate the MFA of 2018. The objection is premised on the basis of letter dated 17 January 2025 sent by Defendant No.1 informing the Plaintiffs that Defendant No.3 has stepped into the shoes of Defendant No.1 and directing Plaintiffs to pay royalty under the MFA of 2018 to Defendant No.3. As observed

above, it is not necessary to delve deeper into the exact arrangement between Defendant No.1 and Defendant No.3 qua IP assignment Agreement dated 20 November 2024 and 12 March 2025 directing plaintiff to pay royalty under the MFA of 2018 to Defendant No.3 vide letter dated 17 January 2025 is not sufficient for concluding at this stage that Defendant No.1 has given up all its right or entitlements under the MFA. Infact, it is contended on behalf of Defendant No.1 that the IP Assignment Agreement dated 20 November 2024 is executed by an altogether different entity, Dexpo which has the effect of only assigning the I.P. rights and not all rights and obligations arising out of the MFA. This aspect can be considered at the time of final decision of the suit and the termination order cannot be stayed by concluding that the same has been issued by an entity not having locus.

37. I am therefore of the view that Plaintiffs have thoroughly failed to make out any prima facie case for grant of temporary injunction in their favour. Infact, their conduct has been such that this Court would be justified in not exercising any equitable jurisdiction in Plaintiff's favour. However, this does not mean that this Court is rejecting temporary injunction merely on the basis of conduct. In law also, no prima facie case is made out by Plaintiffs. Plaintiffs would not suffer irreparable loss if temporary injunction is refused as it is Plaintiff's own admitted case that they were mulling sale of franchise business, which would mean that they are capable of providing hair transplant services without DHI technology or DHI franchise. In the event, Plaintiffs succeed in the Suit, they can be awarded damages. Balance of convenience is also titled heavily against Plaintiffs and in favour of the Defendants. Defendants cannot be prevented from

engaging another partner in respect of franchise business in the Assigned Territories during pendency of the Suit. Plaintiffs' prayer for temporary injunction therefore deserves to be rejected.

38. The Interim Application filed by the Plaintiffs is accordingly **rejected and disposed of.**

(SANDEEP V. MARNE, J.)

NEETA SHAILESH SAWANT
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Date: 2025.10.17 19:42:43 +0530