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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMM ARBITRATION PETITION (L) NO.20863 OF 2026

**ATUL
GANESH
KULKARNI**

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ZEE Learn Limited

A company registered under the provisions of
Indian Companies Act, 1956 and having its
registered office at Continental Building, 135,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018

... **Petitioner**

Vs.

Beauty Singh

Adult individual, Indian Inhabitant, residing
at Ward No. 01, Bisunpur Road,
Mauza Tilaiya, Koderma, Jharkhand

... **Respondent**

Ms. Rashmin Khandekar a/w Mr. Mr. Anand Mohan,
Mr. Umang Mehta, Ms. Trisha George i/b Avyaan Legal,
for the Petitioner.

Mr. R. C. Mishra, for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 21, 2026.

PRONOUNCED ON : AUGUST 25, 2026

JUDGMENT:

1. The present Petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996. The Petitioner seeks ad-interim and interim reliefs pending the arbitral proceedings. The

main relief sought is to restrain the Respondent from using the Petitioner's registered trademark "KIDZEE" or any other mark which is deceptively similar to it. The Petitioner has sought directions for discovery of documents and financial records, preservation of evidence, and for directing the Respondent to furnish a Bank Guarantee of Rs. 7,85,56,728/-. In the alternative, the Petitioner seeks appointment of a Court Receiver for receiving the fees collected by the Respondent.

2. The Respondent was granted a licence to operate a Kidzee Centre at Koderma, Jharkhand. The Franchise Agreement, however, came to an end on 20 January 2020. Upon expiry of the Agreement, the Respondent was required to stop using the Petitioner's trademark and all its Intellectual Property Rights. According to the Petitioner, even after expiry of the Agreement, the Respondent continued to use the trademark "KIDZEE". It is alleged that the Respondent started using the mark "KIDGEE", which according to the Petitioner is deceptively similar to its registered trademark, in respect of the school in question. The Petitioner states that despite issuance of a legal notice, filing of police complaints, and registration of FIR No. 148 of 2024, the Respondent has continued with the unauthorised use. It is the case of the Petitioner that such use is causing serious damage to its reputation and goodwill.

3. The relevant events, as stated by the Petitioner, may be briefly noted as follows: On 20 January 2014, the Petitioner and the Respondent entered into a Kidzee Franchise Agreement for operation of a Kidzee Centre at Bisunpur, Koderma, Jharkhand.

The Agreement was for a period of six years. On 20 January 2020, the Franchise Agreement expired by efflux of time. According to the Petitioner, upon such expiry, the Respondent was required to stop using the trademark "KIDZEE" and all other Intellectual Property Rights belonging to the Petitioner. In January 2023, the Petitioner states that it came to know that the Respondent was still using the trademark "KIDZEE" in relation to the school being run at Koderma, Jharkhand, even though the Franchise Agreement had expired. On 13 February 2023, the Petitioner issued a notice to the Respondent calling upon her to stop using the trademark "KIDZEE" within seven days. The notice stated that if such use was not stopped, appropriate legal proceedings would be initiated. On 26 February 2024, the Petitioner lodged a complaint with the Police Inspector of Telaiya Police Station and requested registration of an FIR against the Respondent for alleged illegal use of the trademark "KIDZEE". On 14 June 2024 and 19 June 2024, the Petitioner sent reminder emails to the concerned Police Station. The Petitioner's representative personally visited the school in question and collected photographic and videographic material which, according to the Petitioner, shows the alleged infringement. FIR No. 148 of 2024 thereafter came to be registered against the Respondent at Tilayya Police Station for offences under Sections 405, 406, 418 and 420 of the Indian Penal Code, 1860, Section 63 of the Copyright Act, 1957, and Section 103 of the Trade Marks Act, 1999. It is stated that the Respondent lodged FIR No. 149 of 2024 against the Petitioner's representative and advocate. The Respondent thereafter filed Anticipatory Bail Application No. 6781

of 2024 before the High Court of Jharkhand. According to the Petitioner, during those proceedings, the Respondent admitted that she was using the name "KIDGEE". The investigation in FIR No. 148 of 2024 was subsequently completed. General Register No. 807 of 2025 was thereafter registered before the Chief Judicial Magistrate, Koderma. The Petitioner relies upon certain news reports published in Prabhat Khabar and Dainik Bhaskar concerning alleged misconduct by teachers at the school in question. According to the Petitioner, these reports have caused damage to the goodwill and reputation connected with its brand. On 12 February 2026, the Petitioner published public notices in the Times of India, Ranchi Edition, and Prabhat Khabar, clarifying that the school run by the Respondent was not associated with the Petitioner. Hence, the present Petition.

4. Mr. Khandekar, learned Advocate appearing for the Petitioner, submitted that the post-termination obligations contained in the Franchise Agreement provide wide protection to the Petitioner. According to him, after termination of the Agreement, the Respondent is specifically prohibited from claiming, in any manner, that she continues to have any association with the Franchisor. The Petitioner claims to be the owner, prior user and registered proprietor of the marks "KIDZEE" in Clauses 9, 16, 28 and 41. Under the Franchise Agreement dated 20 January 2014, the Petitioner granted the Respondent a right to use the Petitioner's intellectual property for operating a "Kidzee Centre", being a nursery school at Jhumritilaiya, Koderma, Jharkhand, subject to the terms and conditions contained in the

Agreement. Under the said arrangement, the Petitioner was the Franchisor and the Respondent was the Franchisee. It is submitted that the Respondent could use the name and operate under the "KIDZEE" brand only because of the Franchise Agreement. In the absence of that Agreement, the Respondent would have had no right to carry on business under the said brand or represent any connection with the Petitioner. According to the Petitioner, the present dispute has arisen from the Respondent's alleged attempt to continue showing such association even after the contractual relationship had come to an end.

5. The Franchise Agreement, according to the Petitioner, clearly provides that after termination, the Respondent has no right to use the Petitioner's intellectual property or to claim any association with the Franchisor. Reliance is placed on Clause 14.4, which reads as follows:

"14.4. As and from the termination date, the Franchisee shall not be entitled to make and in any manner claim its association with the Franchisor or advertise such association or invite applications for admission to the Kidzee Program"

6. It is submitted that the words "in any manner" are of wide importance. According to the Petitioner, after termination, the Respondent was not permitted to represent, directly or indirectly, that she continued to have any connection or association with the Petitioner. It is submitted that Clause 2 of the Agreement provides that if the Franchisee used any other logo, mark, name or trademark in connection with the operation of the Kidzee Centre,

the Franchisee was required to give up such use upon termination. Thus, according to the Petitioner, the basic condition of the licence was that after termination, the Respondent could not claim any association whatsoever, in any manner, with the Petitioner. The Petitioner submits that the present proceedings are for enforcement of this negative contractual obligation. It is submitted that once a licence to use a mark comes to an end, the licensee loses the right to continue using that mark. It is submitted that the Respondent is continuing to use "KIDZEE" in relation to her centre even after termination of the Franchise Agreement. According to the Petitioner, there is a direct contractual prohibition against such use. Therefore, the Petitioner's case is that the statement that the Respondent has stopped using "KIDZEE" is incorrect. It is submitted that the use of the name "KIDGEE" is a manner of continuing to show an association with the Petitioner. According to the Petitioner, by adopting a mark such as "KIDGEE", which is very close to "KIDZEE", the Respondent is attempting to continue the impression of association with the Franchisor despite termination of the Agreement. The Petitioner submits that this issue therefore arises in connection with the Franchise Agreement.

7. According to the Petitioner, the mark "KIDGEE" was adopted after the Respondent lost the right to use "KIDZEE". It is submitted that the adoption of a similar mark immediately after termination is an attempt to avoid the post-termination obligations while continuing to retain the benefit of the earlier association. Therefore, according to the Petitioner, the question regarding adoption and use of "KIDGEE" has to be considered in the

background of the Franchise Agreement and clearly arises in connection with it. The Petitioner submits that "KIDGEE" is phonetically very similar to "KIDZEE", particularly having regard to the manner in which such words may be pronounced in different Indian languages and accents. According to the Petitioner, by using "KIDGEE", the Respondent is attempting to continue the impression that her educational centre is connected with the Petitioner and, on that basis, is inviting admissions to the centre and its programmes. It is submitted that a mark which is nearly identical to another mark may create an impression of association in the minds of persons dealing with the business as well as members of the general public. It is submitted that the marks "KIDZEE" and "KIDGEE" are extremely close to each other. According to the Petitioner, when written in the Devanagari script, the difference between the two may be even less noticeable. The Petitioner relies upon certain local newspaper reports and the records relating to the Respondent's own FIR, where the address of the school is allegedly recorded as "Kidzee" at different places. According to the Petitioner, the adoption of "KIDGEE" is deliberate and intended to preserve the connection in the minds of the public between the Respondent's school and the Petitioner's "KIDZEE" brand. It is submitted that parents and members of the public, who knew the Respondent's school as a "KIDZEE" centre for several years, may continue to believe that the association still exists because of the use of a nearly identical name.

8. The Petitioner submits that the use of a deceptively similar name or mark can be a means of suggesting an association with

the established business and of taking advantage of the goodwill attached to that business. Reliance is placed on the judgment of the Supreme Court in *Laxmikant V. Patel v. Chetanbhai Shah and Anr.*, (2002) 3 SCC 65. The Petitioner relies particularly upon paragraph 10, where the Supreme Court held that a business name may acquire reputation and goodwill over time and that the law does not permit a person to conduct business in a manner which leads customers or clients to believe that the goods or services are those of another person or are associated with that person. Reliance is placed on the decision of this Court in *Encore Electronics Ltd. v. Anchor Electronics and Electricals Pvt. Ltd.*, 2007 SCC OnLine Bom 147. The Petitioner refers to paragraph 15 of the said judgment to submit that use of a deceptively similar name may be restrained where the public is likely to believe that the defendant's product or business has an association with the reputation or quality of the plaintiff. The Petitioner relies upon the observations in paragraphs 8 and 21 of the said judgment regarding the manner in which the ordinary Indian consumer may pronounce a word while considering phonetic similarity. According to the Petitioner, "KIDGEE" is phonetically so close to "KIDZEE" that, in ordinary pronunciation, it may convey substantially the same impression.

9. The Petitioner submits that the defence raised by the Respondent in paragraph 17 of the Affidavit in Reply is not bona fide. The relevant statement reads as follows:

10. "I say that the KID is generic word, hence the word KID can be used by anyone, the petitioner cannot restrain to use generic

word as KID, and it is well known to the petitioner that the school name is published on the main gate of the school as KIDGEE School which totally different from the petitioner trade mark KIDZEE Play School."

11. According to the Petitioner, the issue is not merely whether the word "KID" is generic. The Petitioner submits that the Respondent has adopted a name which is very close to the complete mark "KIDZEE". According to the Petitioner, there is no real basis to say that the two rival marks are completely different. It is submitted that the Respondent has selected a name very close to the Petitioner's mark and that such choice has the effect of continuing the impression of association with the Petitioner even after termination of the Agreement.

12. Reliance is placed on *K.R. Chinna Krishna Chettiar v. Sri Ambal & Co., (1969) 2 SCC 131*. The Petitioner relies upon paragraph 7, wherein the Supreme Court held that "Sri Andal" and "Sri Ambal" could be deceptively similar in sound. It was held that resemblance has to be considered with reference to the ear as well as the eye. According to the Petitioner, this principle supports its contention that visual differences alone cannot decide the question when the marks are very similar in pronunciation. According to the Petitioner, the alleged infringement directly falls within the contractual prohibition contained, among other provisions, in Clause 14.4 of the Franchise Agreement. It is submitted that the Respondent is using both "KIDZEE" and "KIDGEE" at the same time and without any clear distinction. According to the Petitioner, the simultaneous use of both names shows an intention to connect

"KIDGEE" with "KIDZEE" and thereby continue the association with the Petitioner. The Petitioner submits that such conduct is prohibited by the Franchise Agreement. The Petitioner submits that after termination of the Franchise Agreement, the Respondent is not entitled to use any Intellectual Property Rights belonging to the Petitioner in view of Clause 4.1(c) of the Agreement. The expression "Intellectual Property Rights", as defined in Clause 1.8, is stated to include the rights connected with the "KIDZEE" mark and the goodwill attached to it. According to the Petitioner, by using "KIDGEE" after termination, the Respondent is taking advantage of the goodwill and reputation built around the mark "KIDZEE". It is submitted that this conduct is prohibited under the Agreement and cannot be treated as a dispute completely separate from the contractual relationship.

13. The Petitioner submits that the alleged conduct can be viewed from two aspects. First, there is alleged unauthorised use of the goodwill attached to the Petitioner's brand. Second, there is an alleged attempt to continue showing association with the Petitioner after termination. According to the Petitioner, both are prohibited by the contractual terms. The Petitioner submits that the goodwill attached to a business and its mark is an independent commercial asset. According to the Petitioner, the relief sought for protection against unauthorised use of such goodwill has its basis in the rights and obligations created under the Franchise Agreement. According to the Petitioner, by using both "KIDZEE" and "KIDGEE", the Respondent is continuing to create an impression among customers and parents that the educational

centre presently run by her remains associated with the Petitioner.

14. The Petitioner relies upon Clause 4.4(e)(iii) of the Franchise Agreement. It is submitted that the Agreement was required to be followed in its letter and spirit. According to the Petitioner, the clear intention of the Agreement was that, after termination, the Respondent would not attempt to show any connection whatsoever with the Petitioner. It is submitted that the use of a name nearly identical to the mark earlier permitted to the Respondent is contrary to this contractual obligation. The Petitioner relies upon the school's marketing material, brochures, photographs and material relating to school uniforms. According to the Petitioner, this material shows simultaneous use of both "KIDZEE" and "KIDGEE". In view of these submissions, the Petitioner contends that this Court has the power to restrain the Respondent from using both "KIDZEE" and "KIDGEE" in relation to the educational centres operated by her.

15. The Petitioner submits that the arbitration clause contained in Clause 17.1 of the Franchise Agreement is widely worded. It covers disputes arising "out of or in connection with" the Agreement. According to the Petitioner, the dispute concerning the Respondent's use of "KIDGEE" is closely connected with the Franchise Agreement and cannot be treated as a dispute entirely outside it. It is submitted that where expressions such as "arising out of or in connection with" are used in an arbitration agreement, they are normally given a wide meaning. Reliance is placed on *Renusagar Power Co. Ltd. v. General Electric Co.*, (1984) 4 SCC 679, particularly paragraphs 15 and 25. According to the

Petitioner, questions concerning the scope and applicability of the arbitration agreement to a particular dispute can be considered by the Arbitral Tribunal.

16. The Petitioner submits that the present claim is a claim in personam against the Respondent and can therefore be adjudicated in arbitration. On this basis, it is contended that there is no legal bar either to this Court granting appropriate interim protection under Section 9 of the Arbitration and Conciliation Act, 1996 or to the Arbitral Tribunal granting appropriate relief. The Petitioner submits that it is not seeking a declaration of ownership of the mark "KIDZEE" against the world at large. The relief is sought only against the Respondent, who is a party to the Franchise Agreement. The Petitioner seeks to enforce the obligations contained in Clauses 4.1(c) and 14.4.

17. According to the Petitioner, the Respondent has not disputed the Petitioner's proprietorship of the mark. The Petitioner submits that after termination of the Agreement, the Respondent has continued to use "KIDZEE" and has used the allegedly similar mark "KIDGEE". It is contended that the purpose is to connect the two names in the minds of the public and to maintain the impression of association with the Petitioner. According to the Petitioner, the Respondent is thereby continuing to benefit from the goodwill and reputation of the Petitioner's trademark.

18. The Petitioner therefore submits that the claim is contractual and is in personam. According to the Petitioner, the question whether "KIDGEE" suggests an association with the Petitioner or

with "KIDZEE", and whether its use amounts to continuing to claim association contrary to the post-termination obligations, is a question of fact directly connected with the alleged breach of Clauses 4.1(c) and 14.4 of the Franchise Agreement. It is submitted that this issue falls within the scope of the arbitration clause, particularly because Clause 17.1 covers disputes arising "in connection with" the Agreement.

19. Reliance is placed on paragraphs 17 and 18 of *Eros International Media Limited v. Telexmax Links India Pvt. Ltd.*, 2016 SCC OnLine Bom 2179. Reliance is placed on *EuroKids International Pvt. Ltd. v. Bhaskar Vidhyapeeth Shikshan Sanstha*, 2015 SCC OnLine Bom 3492, particularly paragraph 18. The Petitioner submits that in the said case, this Court, while considering a petition under Section 9 filed by the franchisor of a chain of pre-schools, restrained the former franchisee from operating the school and from using the franchisor's marks. It is submitted that the Court held that where the franchisor's proprietorship was not in dispute, the proceedings were not proceedings in rem. The Petitioner submits that arbitration should provide one forum for resolving commercial disputes arising from the same contractual relationship. According to the Petitioner, if disputes arising from the same facts are divided between different forums, there may be a possibility of inconsistent findings.

20. The Petitioner submits that recent judgments support the view that where unauthorised use of an admitted trademark arises from a contractual relationship containing a valid arbitration agreement, and the rights sought to be enforced are rights in

personam, the dispute can be referred to arbitration. Reliance is placed on *K. Mangayarkarasi v. N.J. Sundaresan*, (2025) 8 SCC 299, particularly paragraph 9. The Petitioner submits that the Supreme Court upheld a reference to arbitration in a dispute involving injunction and damages, including claims relating to infringement and passing off, where the dispute was contractual in origin.

21. Reliance is placed on *Vidya Drolia and Ors. v. Durga Trading Corporation*, (2021) 2 SCC 1, to submit that trademark disputes involving rights in personam may be capable of arbitration. According to the Petitioner, if the dispute regarding "KIDGEE" is required to be decided in a separate civil suit while the dispute concerning "KIDZEE" proceeds in arbitration, the same cause of action arising from the same Franchise Agreement would be divided between two different forums. According to the Petitioner, this may result in conflicting findings. It is submitted that the arbitration clause was intended to avoid such a situation.

22. The Petitioner submits that the Respondent admits execution of the Franchise Agreement. She admits that the franchise relationship continued from 2014 to 2020 and that she operated her school under the name "KIDZEE" during that period. Reference is made to paragraph 7 of the Affidavit in Reply. It is submitted that the Respondent admits that she sought renewal after expiry of the Agreement and that such renewal was not granted. Reference is made to paragraphs 8 and 25 of the Affidavit in Reply. According to the Petitioner, therefore, the basic contractual relationship is admitted. It is submitted that the Respondent has had no licence to

use the Petitioner's intellectual property after 2020.

23. The Petitioner submits that the Respondent continues to operate from the same premises and in the same locality. The centre deals with parents who knew the school as a "KIDZEE" centre for about six years. According to the Petitioner, every academic year in which admissions are invited under the name "KIDGEE" may strengthen the connection in the minds of such parents between the Respondent's school and the Petitioner's brand. It is submitted that the change of one letter may not be easily noticed, particularly when the name is spoken or written in Devanagari. According to the Petitioner, the alleged injury is therefore continuing and is not confined to a past event.

24. The Respondent has denied earning any amount in the Petitioner's name, as stated in paragraph 40 of the Affidavit in Reply. However, according to the Petitioner, the Respondent has not produced accounts, details of admissions or particulars of fees collected from the academic year 2020 to 2021 onwards. The Petitioner submits that its alleged loss cannot be properly assessed without such disclosure. Reliance is placed on EuroKids International Pvt. Ltd., where this Court, according to the Petitioner, granted interim protection and directed the former franchisee to disclose on affidavit the amounts collected, while granting liberty to the franchisor to seek interim measures before the Arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act, 1996.

25. The Petitioner relies upon newspaper reports concerning alleged instances of misconduct and child abuse at the school operated by the Respondent. According to the Petitioner, since the reports are published in the Devanagari script, members of the public may connect the school with the Petitioner's "KIDZEE" brand because of the similarity between the names. It is submitted that this may cause serious harm to the Petitioner's reputation. According to the Petitioner, the conduct of the Respondent, the negative obligations contained in Clauses 4.1(c) and 14.4, the use of the allegedly phonetically similar mark, the wide language of the arbitration clause, and the continuing nature of the alleged harm show that the balance of convenience lies in favour of the Petitioner.

26. Finally, it is submitted that the rights sought to be enforced are rights in personam against the Respondent, who is a party to the Franchise Agreement. According to the Petitioner, the Respondent's use of the impugned marks is contrary to the contractual obligations. It is therefore submitted that this Court has jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996 to grant appropriate interim relief and restrain the Respondent from continuing to claim or represent any association with the Petitioner.

27. Mr. Mishra, learned Advocate appearing for the Respondent, submitted that the Petitioner is seeking enforcement of independent statutory rights and is not seeking enforcement of rights arising only under the Franchise Agreement entered into between the Petitioner and the Respondent.

28. The Respondent submitted that, because of the restrictions imposed during the Covid-19 period, her school could not remain operational for about two years. According to the Respondent, after the restrictions were relaxed and the school activities resumed in the year 2022, she came to know that the Franchise Agreement had not been renewed. She submitted that immediately thereafter she stopped using the name "KIDZEE Play School". According to her, after expiry of the Franchise Agreement dated 20 January 2014, she has not run the school under the name "KIDZEE Play School".

29. The Respondent submitted that she made an application to the Education Department of the Government of Jharkhand seeking permission to run her school under the name "KIDGEE School" through Bihan Foundation. According to her, the Government of Jharkhand permitted the school to operate and registered it under the Unified District Information System for Education by issuing UDISE Code No. 20050116403.

30. Mr. Mishra submitted that after the Respondent started running the school under the name "KIDGEE School" through Bihan Foundation, and after obtaining the necessary permission from the Government of Jharkhand, officers connected with the Petitioner started threatening to get the school closed. According to the Respondent, when she refused to run the school under any name other than the permitted name "KIDGEE School", persons allegedly connected with the Petitioner started sending unknown and antisocial persons to threaten her and demand ransom. It is her case that attempts were made to damage her goodwill and

reputation in the locality.

31. The Respondent submitted that she approached the High Court of Jharkhand at Ranchi by filing Anticipatory Bail Application No. 6781 of 2024. Reliance is placed on the observations recorded by the High Court in paragraph 3, which reads as follows:

"Learned Counsel for the petitioner drew attention of this Court towards content of F.I.R. and other material available on records and submitted that she was having franchise to run school under the name and style of KIDZEE from 2014 to 2020. However, after expiry of the period, petitioner started running school in different name i.e. KIDGEE after doing all required formality from the Government of Tharkhand. It has been brought to notice of this Court that the petitioner has lodge a case being Telaiya P.S. Case no. 149 of 2024 against the employee of KIDZEE. He pointed out the report of Regional Education Officer. Jainagar, Koderma and read out the content of the same."

32. According to the Respondent, the above observation of the High Court of Jharkhand shows that she is running her school under a different name and style. It is therefore submitted that there is no basis for granting the interim reliefs sought by the Petitioner. The Respondent submitted that she has been permitted by the Government of Jharkhand to run the school under the name "KIDGEE School" through Bihan Foundation. According to her, there is therefore no breach of any term or condition of the

Franchise Agreement which is required to be decided by an Arbitral Tribunal. The Respondent submits that she is not operating the school under the Petitioner's brand. According to her, the school is being run under a different name, namely "KIDGEE School", and such operation has been permitted by the Government of Jharkhand. It is therefore her case that she has not committed any breach of the terms and conditions of the Franchise Agreement.

33. The Respondent submitted that the word "KID" is a generic word and that several trademarks containing the word "KID" have been granted or applied for by different schools and educational institutions. In this regard, reliance is placed upon a trademark stated to have been registered or applied for in the name "KIDGEES Play School & Daycare" before the appropriate office at Chennai, Tamil Nadu, under Trade Mark Application No. 2385280 dated 24 August 2012. According to the Respondent, therefore, the Petitioner cannot claim an exclusive right over the use of the generic word "KID".

REASONS AND ANALYSIS

34. I have considered the submissions made by Mr. Khandekar, learned Advocate appearing for the Petitioner, and Mr. Mishra, learned Advocate appearing for the Respondent. I have gone through the Franchise Agreement dated 20 January 2014, the pleadings filed by both sides, the clauses on which they have placed reliance, and the material produced concerning use of the names "KIDZEE" and "KIDGEE".

35. The first question is about what is the real nature of dispute between the parties. The Respondent submits that the Petitioner is trying to enforce an independent statutory right in the trademark. According to her, the right claimed does not arise from the contract and, therefore, the dispute cannot be treated as a contractual dispute. I am unable to accept this submission in the manner in which it is made. There is no dispute that the Petitioner claims rights in the registered mark "KIDZEE". However, in the present Petition, this Court is not required to decide the ownership or registration of the mark against the whole world. The grievance of the Petitioner is against this particular Respondent. It is admitted that the Respondent had entered into the Franchise Agreement with the Petitioner. Under that Agreement, she was permitted to use the name "KIDZEE". The grievance of the Petitioner is that after such contractual permission came to an end, the Respondent continued the educational activity and continued using either the Petitioner's mark or a name which is deceptively similar to it.

36. In *EuroKids International Private Limited*, this Court considered a similar matter arising from a franchise arrangement. In paragraph 18, this Court observed:

"18. By this petition filed under section 9 of the Arbitration Act, the petitioner has only applied for an order and injunction against the respondent from operating any EuroKids School or using the method, license rights or any other traded name, logos etc. and seeks to restrain the respondent from using of such trade mark and copyright in those items and the trade name of the petitioner in

compliance with its obligations under the said franchise agreement and other related reliefs. The petitioner has not filed any statement of claim before the learned arbitrator. The judgment of the Supreme Court in the case of Booz Allen & Hamilton Inc. (supra) thus does not assist the respondent. In my view, since there is no dispute about the trade mark and copyright of the petitioner in various items, the proceedings filed by the petitioner is not in the nature of the proceedings in rem. In any event as and when the statement of claim is filed and if any such relief which would be in the nature of the proceedings in rem is claimed, the respondent can always raise issue of jurisdiction before the learned arbitrator."

37. The above principle applies to the present case. The Petitioner is not asking for a declaration which will bind every person in the world. The relief is claimed against the Respondent, who was a party to the Franchise Agreement. The dispute is whether, after expiry of that Agreement, the Respondent can use "KIDZEE", or a name deceptively similar to it, and whether such use is contrary to the obligations undertaken by her under the Agreement. Therefore the dispute is between identified parties and arises from their earlier commercial and contractual relationship.

38. The next question is whether the Franchise Agreement contains any restriction upon the Respondent after expiry or termination of the Agreement. On this aspect, the material relied upon by the Petitioner is direct. Clause 14.4 provides:

"14.4. As and from the termination date, the Franchisee shall not be entitled to make and in any manner claim its association with the Franchisor or advertise such association or invite applications for admission to the Kidzee Program"

39. The language of this clause is clear. From the termination date, the Respondent was not entitled to claim association with the Franchisor "in any manner". She was not entitled to advertise such association or invite applications for admission to the Kidzee Program. This is a clear negative covenant. Thus, the Petitioner has not approached this Court only with a general complaint about infringement of trademark. The Petitioner is relying upon a specific contractual obligation which the Respondent was required to follow after the Agreement came to an end.

40. Clause 4.1(c) is relied upon by the Petitioner. According to the Petitioner, after termination, the Respondent was not entitled to use the Intellectual Property Rights. The Petitioner submits that the expression "Intellectual Property Rights" in Clause 1.8 includes the rights and goodwill connected with the mark "KIDZEE". Therefore, on a plain reading of the contractual arrangement, the permission given to the Respondent for using the Petitioner's mark was subject to the period and conditions of the franchise.

41. The Respondent submits that after expiry of the franchise, she stopped using the name "KIDZEE Play School". According to her, when she came to know in 2022 that the franchise had not been renewed, she stopped using that name. Thereafter, she started the school under the name "KIDGEE School" through Bihan

Foundation. She has relied upon the UDISE registration and permission obtained from the Government of Jharkhand. This submission needs consideration. The fact that the Respondent may have obtained registration, recognition or a UDISE Code from the education authorities does not, by, answer the contractual obligation existing between the Respondent and the Petitioner. The Education Department may consider whether a school satisfies the conditions required for registration, recognition or educational administration. Such permission, by, does not decide whether the person running the school is contractually entitled to use another person's trademark or a name which may give an impression of association prohibited by a private agreement.

42. The statutory or administrative permission and the contractual obligation operate in different fields. Even if it is assumed that the Government of Jharkhand permitted the Respondent to run a school under the name "KIDGEE School", such permission cannot change Clause 14.4 of the Franchise Agreement. It cannot bring back the licence which had expired under the Agreement.

43. The issue before this Court is whether she can run the school under a name or in a manner which, according to the Petitioner, violates her contractual obligations and is likely to create an impression that her association with "KIDZEE" is still continuing. The Respondent has relied upon paragraph 3 of the order passed by the High Court of Jharkhand in Anticipatory Bail Application No. 6781 of 2024. The relevant observation is as follows:

"Learned Counsel for the petitioner drew attention of this Court towards content of F.I.R. and other material available on records and submitted that she was having franchise to run school under the name and style of KIDZEE from 2014 to 2020. However, after expiry of the period, petitioner started running school in different name i.e. KIDGEE after doing all required formality from the Government of Tharkhand. It has been brought to notice of this Court that the petitioner has lodge a case being Telaiya P.S. Case no. 149 of 2024 against the employee of KIDZEE. He pointed out the report of Regional Education Officer. Jainagar, Koderma and read out the content of the same."

44. I am unable to read the above observation as a final finding regarding the contractual rights of the parties. That order was passed in proceedings concerning anticipatory bail. The Court was considering the material placed before it for the limited purpose arising in those proceedings. The observation that the Respondent was running the school under a different name does not finally decide whether "KIDGEE" is deceptively similar to "KIDZEE". It does not decide whether use of that name violates Clause 14.4, whether it amounts to claiming continued association with the Petitioner, or whether there is a breach of the negative covenant. These questions were not finally decided in the anticipatory bail proceedings.

45. The main dispute comes to the use of the name "KIDGEE". The Respondent submits that the word "KID" is generic and many schools use names containing that word. She has referred to

"KIDGEES Play School & Daycare" and Trademark Application No. 2385280. However, this submission by does not answer the real dispute. The Petitioner is not saying that no person anywhere can use the word "KID". The question is whether this particular Respondent, after having operated a school under the name "KIDZEE" for about six years under a franchise arrangement and after expiry of that arrangement, could adopt the name "KIDGEE" for the same educational activity and in the same locality without violating the obligation not to claim association with the Petitioner "in any manner". Therefore, the defence based only on the common word "KID" does not answer the entire case. A mark cannot always be examined by separating one common word from the remaining part and then ignoring the overall impression created by the rival names. The surrounding circumstances are required to be considered.

46. In *Encore Electronics Ltd*, this Court considered the question regarding similarity of names. In paragraph 15, the Court referred to the principle that even where there may be no direct product confusion, use of a deceptively similar name can still be restrained if it creates an impression that there is some association with a person having an established reputation. The Court reproduced the following passage:

“To put the matter in general terms, if one trader acquires a reputation with the public in relation to a particular name or get-up, the use of that name or get-up by another trader in either an associated field or even in a different field may be restrained if the public may be confused into thinking that

the product or service of the other trader has the cachet of the first trader's established name or get-up. This is to be distinguished from what may be called product confusion. In the case with which I am concerned there is obviously no possibility whatever of product confusion. No one would purchase the defendants' Red Label cigarettes thinking that he was buying the plaintiffs' Red Label whisky. The confusion, if any, is only that of name."

47. The above principle is relevant in the present matter. At this stage, the Petitioner is not required to show that every parent who intends to take admission in a "KIDZEE" school will necessarily go to the Respondent's school believing that it is exactly the same school. The question is whether use of the name "KIDGEE", considering the facts of this case, is likely to make an ordinary parent believe that the Respondent's school still has some connection or association with the Petitioner. The material placed before the Court makes this possibility substantial. The Respondent operated the same school as a "KIDZEE" centre from 2014 to 2020. The franchise relationship and the earlier use of "KIDZEE" are not disputed. Thereafter, the educational establishment continued in the same locality and the name "KIDGEE" was adopted. Therefore, this is not a case of two persons having no connection with each other independently selecting similar names without any earlier relationship. The admitted earlier association between the parties is an important circumstance and cannot be ignored. Paragraph 8 of Encore Electronics is relevant. The Court observed:

"8. The phonetic similarity between 'Anchor' on the one hand

and “Encore”, on the other, is striking. The two marks are phonetically, visually and structurally similar. The overall impression conveyed by a mark as a whole, has to be assessed in evaluating whether the mark of the defendant is deceptively similar to the mark of the plaintiff. Phonetic similarity constitutes an important index of whether a mark bears a deceptive or misleading similarity to another.”

48. The Court held that similarity has to be judged from the point of view of an ordinary consumer in India, keeping in mind the manner in which the words are generally spoken and understood in the languages and scripts used in the country. The same principle becomes relevant here. “KIDZEE” and “KIDGEE” are short names. Their overall sound is close. The difference between the letters “Z” and “G” can be seen in English spelling. However, the Court is required to consider how these words are likely to sound when they are spoken and understood by persons in the locality. Therefore, the Petitioner's submission regarding pronunciation in Indian languages cannot be rejected only because one letter in the English spelling is different.

49. *Encore Electronics* makes it clear that the test is not limited to asking whether a customer who wants the plaintiff's product will finally purchase the defendant's product. The question can be whether an ordinary customer is likely to believe that the defendant's name is associated with the plaintiff's mark and trading style. In the present matter, the admitted six year franchise relationship becomes an important circumstance while applying this test.

50. The Supreme Court in *Laxmikant V. Patel* considered protection of reputation and goodwill connected with a trading name. In paragraph 10, the Supreme Court observed:

"10. A person may sell his goods or deliver his services such as in case of a profession under a trading name or style. With the lapse of time such business or services associated with a person acquire a reputation or goodwill which becomes a property which is protected by courts. A competitor initiating sale of goods or services in the same name or by imitating that name results in injury to the business of one who has the property in that name. The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that the goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which belongs to someone else it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury."

51. This principle does not mean that every use of a somewhat similar word becomes unlawful. The Court has to examine all the circumstances and consider the overall impression likely to arise in the mind of an ordinary person. In the present matter, the

Respondent earlier used the exact mark "KIDZEE" under authority given by the Petitioner. That authority later came to an end. Thereafter, the same educational activity continued and the Respondent adopted the name "KIDGEE". These circumstances, when looked at together, give substantial force to the grievance of the Petitioner.

52. The Respondent submits that she did not continue to use "KIDZEE" after expiry of the Agreement. At this interim stage, this submission alone cannot defeat the Petition. The Petitioner has produced material alleging continued use of "KIDZEE" and has relied upon photographs, videos, school material, newspaper reports and references appearing in the criminal proceedings. The Respondent disputes this factual position. These disputed facts will require proper examination in the appropriate proceedings. However, the existence of such dispute means that the Respondent's version cannot be accepted as finally established merely on the basis of her assertion at this stage. Even if it is assumed for the present purpose that the Respondent stopped using the exact word "KIDZEE", that fact alone does not answer the Petitioner's case concerning "KIDGEE". Clause 14.4 does not only prohibit use of the exact trademark. It states that after termination the Franchisee shall not "in any manner claim its association with the Franchisor or advertise such association". Therefore, the contractual obligation is wider than a simple prohibition against reproducing the exact registered mark.

53. The submission that "KIDGEE" is a completely different name has, therefore, to be examined in the context of the contract. The

question is not only whether the spelling of the two names is identical. The question is whether the manner in which "KIDGEE" is used, in the background of the earlier franchise, is likely to convey that the association with the Petitioner is still continuing. On the material presently before the Court, there is a strong prima facie basis for examining this issue in favour of the Petitioner.

54. Another relevant circumstance is that the Respondent admits that she had sought renewal of the franchise and that such renewal was not granted. This shows that she was aware that the earlier contractual permission had come to an end. Her later adoption of another closely similar name, therefore, has to be examined in this factual background. The Respondent may be entitled to establish and run an independent school. However, this does not mean that she can retain or continue the commercial association of the earlier franchise by adopting a name which may create an impression that such connection is still continuing.

55. The arbitration clause requires consideration because the principal objection of the Respondent is that the dispute concerns an independent statutory trademark right and is, therefore, outside arbitration. The arbitration clause is stated to cover disputes arising "out of or in connection with" the Franchise Agreement. Such words have wide meaning. In *Renusagar Power Co. Ltd.*, the Supreme Court considered similar expressions. In paragraph 15, the Supreme Court observed that words such as "arising out of" have a wide meaning and expressions such as "relating to", "in relation to", "in respect of", "in connection with" and "concerning" the contract have very wide content. In paragraph 25, the Supreme

Court summarised the position as follows:

"(1) Whether a given dispute inclusive of the arbitrator's jurisdiction comes within the scope or purview of an arbitration clause or not primarily depends upon the terms of the clause; it is a question of what the parties intend to provide and what language they employ.

(2) Expressions such as "arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to" the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement."

56. Therefore, only because the dispute concerns a trademark, it does not go outside the arbitration agreement. The Court has to see what is the actual right which is being enforced and from where that right arises.

57. This position has been clearly stated by the Supreme Court in *K. Mangayarkarasi*. In paragraph 14, the Supreme Court observed:

"14. The assumption that all matters relating to trade marks are outside the scope of arbitration is plainly erroneous. There may be disputes that may arise from subordinate rights such as licences granted by the proprietor of a registered trade mark. Undisputedly, these disputes, although, involving the right to use trade marks, are arbitrable as they relate to rights and obligations inter se the

parties to a licence agreement."

58. The above observation answers the submission of the Respondent. There may be matters concerning registration of a trademark or rights operating against the whole world which may stand on a different footing. However, the present dispute does not require cancellation or registration of any trademark. The dispute concerns the right of this particular Respondent, after expiry of the franchise, to use the Petitioner's mark or a similar mark in the context of the contractual relationship between the parties. That right arises from the earlier licence and from the obligations undertaken under the Franchise Agreement. Therefore, the dispute concerns rights and obligations between these parties. In paragraph 13 of *K. Mangayarkarasi*, while referring to *Vidya Drolia*, the Supreme Court observed that grant of patents and registration of trademarks are matters having erga omnes effect. However, disputes between identified parties concerning rights in personam may still be arbitrable. This distinction is relevant here. The present Petition is against the Respondent. The Petitioner is not seeking any alteration in the Register of Trade Marks or a declaration which will bind every person.

59. The Respondent has relied upon criminal proceedings and allegations concerning threats and other misconduct. Those allegations may have to be considered in the criminal proceedings or in other proceedings where they properly arise. They do not decide the contractual dispute which is presently before this Court. In paragraph 20 of *K. Mangayarkarasi*, the Supreme Court stated:"20. The law is well settled that allegations of fraud or

criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the Arbitral Tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement."

60. Therefore, the existence of FIR No. 148 of 2024 or other criminal allegations cannot, by themselves, decide whether the Respondent has complied with Clause 14.4 of the Franchise Agreement.

61. The Respondent's reliance upon Government permission and the UDISE Code has been considered. These documents may show that the Respondent has obtained registration for educational purposes. However, they do not show that the Petitioner granted her any continuing licence to use the name "KIDZEE" or a name deceptively similar to it. A UDISE Code cannot be treated as consent given by the Petitioner under the Franchise Agreement.

62. The Petitioner's allegation regarding use of both "KIDZEE" and "KIDGEE" requires consideration. If the material produced by the Petitioner is ultimately found to be correct, simultaneous or overlapping use of the two names would be a relevant circumstance. The Respondent had no contractual right, after termination, to continue representing an association with the Petitioner. If "KIDZEE" and "KIDGEE" were both used in connection with the same educational establishment, it may support the Petitioner's case that "KIDGEE" was selected in a manner intended to retain the earlier association. The final truth of these allegations will have to be examined in arbitration. At this stage,

however, the material cannot be said to be imaginary or without any substance.

63. The Petitioner's submission concerning goodwill requires consideration. A school known for about six years by the name "KIDZEE" may become connected with that name in the minds of parents and students. If, immediately after termination, a closely similar name is used for the same educational activity, the possibility of continued association cannot be treated as remote. This becomes more relevant because the earlier use of "KIDZEE" by the Respondent was under authority obtained from the Petitioner. I find that the Petitioner has made out a prima facie case of continuing prejudice. The issue is not limited to individual admissions or financial loss. There is a question regarding the effect upon the distinctiveness and reputation connected with the "KIDZEE" mark.

64. The Petitioner relies upon newspaper reports concerning alleged incidents at the Respondent's school and submits that members of the public may connect such incidents with the Petitioner's brand because of similarity in the names. At this stage, it is not necessary to finally decide whether every person reading such reports would make such an association. The possibility cannot be treated as remote when closely similar names are used for the same type of educational services and the Respondent was earlier a franchisee of the Petitioner.

65. The Respondent disputes that she has earned any amount by using "KIDZEE". The Petitioner submits that proper accounts,

admission details and fee records have not been disclosed. The exact amount, if any, earned by the Respondent and the exact loss suffered by the Petitioner cannot be finally decided only on the basis of competing assertions at this stage. This dispute can be properly examined after relevant disclosure and in the arbitral proceedings. Therefore, the precise monetary claim must remain open.

66. The Petitioner's prayer for production and preservation of relevant documents and financial records stands on a different footing. The Petitioner alleges that admissions continued and fees were collected during the disputed period. These records may become necessary for proper adjudication of the claim in arbitration. Preservation of such material is necessary so that the arbitral proceedings do not become ineffective because relevant evidence is destroyed, altered or made unavailable.

67. At the same time, the prayer seeking a Bank Guarantee of Rs. 7,85,56,728/- requires greater caution. Interim protection under Section 9 is meant to protect the subject matter of arbitration and to ensure that the final relief does not become ineffective. It cannot be used to grant, at the interim stage, security for the entire monetary claim without sufficient factual basis. On the material presently available, the full amount of Rs. 7,85,56,728/- cannot be treated as an admitted or presently established liability of the Respondent. The question of quantification and final liability must remain for determination in arbitration. Preservation and disclosure of the relevant financial material would sufficiently protect the Petitioner's claim at this stage.

68. The prayer for appointment of a Court Receiver to collect the fees of the school requires similar caution. Appointment of a Receiver would directly interfere with the operation and management of the school. The Respondent claims that she is operating the school with permission from the Government authorities. Unless such a drastic order is shown to be necessary for protecting the Petitioner's rights, a less intrusive order should be preferred. In the present case, preservation of records, disclosure of relevant information and maintenance of proper accounts would, at this stage, adequately protect the Petitioner's monetary claim. Appointment of a Court Receiver to collect admission fees is not necessary at present.

69. The balance of convenience is in favour of preventing use of "KIDZEE" or a deceptively similar name in a manner which gives an impression of continued association with the Petitioner. The Respondent was aware that the franchise had expired. She admits that renewal was not granted. Thereafter, she adopted the name "KIDGEE" for the same type of educational activity. Considering the earlier relationship, the similarity between the names and the express restriction contained in Clause 14.4, the Petitioner has established a prima facie case requiring interim protection.

70. I am unable to accept the submission that because the Respondent has obtained a UDISE Code and Government permission, there can be no breach of the Franchise Agreement. The Government permission and the contractual obligation are separate matters. The educational authority may regulate whether the school can function. It does not decide whether a former

franchisee has complied with a contractual negative covenant given to the owner of a brand. The principles in *K. Mangayarkarasi* make it clear that once the dispute is found to arise from a contractual relationship covered by an arbitration agreement, the mere fact that a trademark is involved does not take the dispute outside arbitration. In paragraph 23, the Supreme Court observed:

"23. Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject-matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract. There is no element of discretion left in the court or judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration."

71. The present proceedings are under Section 9 and are for interim protection pending arbitration. This Court is not finally deciding the Petitioner's trademark rights against the whole world. The purpose is to protect and preserve the rights arising from the contractual relationship until the disputes are decided according to the arbitration agreement.

72. On overall consideration of the material, I find that the Petitioner has established a strong prima facie case that after expiry of the Franchise Agreement, the Respondent had no contractual right to continue using "KIDZEE". The Petitioner has established a prima facie case requiring restraint against use of "KIDGEE" or any other deceptively similar name in circumstances

which convey a continuing association with the Petitioner. The use of "KIDGEE", when considered in the peculiar facts of this matter, cannot at this stage be treated as an entirely independent choice of name. The earlier franchise relationship, use of "KIDZEE" for several years, continuation of the same educational activity and the phonetic and structural closeness of the names are circumstances which are required to be considered together. The submission that "KID" is a generic word does not change this prima facie conclusion. The Petitioner's case is not based upon exclusive ownership of the word "KID". The case is based upon the overall similarity between "KIDZEE" and "KIDGEE", the circumstances in which "KIDGEE" was adopted, the earlier contractual association and the express restriction contained in Clause 14.4.

73. The reliance placed by the Petitioner on *Encore Electronics* and *Laxmikant V. Patel* is well founded to the limited extent that these decisions require the Court to examine the overall possibility of association and confusion in the mind of an ordinary person. A literal difference in spelling by is not decisive.

74. In the present matter, a parent in the same locality who knew the school as "KIDZEE" for several years may believe that "KIDGEE" is either the same institution under a changed name or an institution having some continuing association with the Petitioner. This possibility becomes stronger because both names are used for the same kind of educational activity. The result of the above discussion is that the Respondent cannot continue to use "KIDZEE" after expiry of the Franchise Agreement. She cannot use "KIDGEE" or any other deceptively or phonetically similar name in

a manner which is likely to suggest a continuing association or affiliation with the Petitioner. This conclusion is based upon the prima facie contractual negative covenant and the need to prevent continuing prejudice to the Petitioner's goodwill pending arbitration.

75. However, the interim relief must remain limited to protection of the Petitioner's rights. It should not amount to final adjudication of the entire monetary claim. The claims regarding the exact financial loss, the amount allegedly collected by the Respondent and the ultimate financial liability of the Respondent are left open for determination by the Arbitral Tribunal. The Respondent shall, however, preserve all records relating to admissions, fees, accounts, publicity, marketing material and use of the names "KIDZEE" and "KIDGEE" from the date of expiry of the Franchise Agreement. Such material shall not be destroyed, altered, concealed or transferred in a manner which prevents its production before the Arbitral Tribunal.

76. In these circumstances, the Petition succeeds to the extent of protecting the Petitioner's contractual and proprietary interests pending arbitration. The Respondent is required to discontinue use of "KIDZEE". The Respondent is restrained from using "KIDGEE" or any other deceptively or phonetically similar mark or name in a manner which suggests that the Respondent or her school has any continuing association, affiliation or connection with the Petitioner. The issue regarding final damages, accounts, recovery and other consequential monetary reliefs shall remain for adjudication in the arbitral proceedings.

77. The prayer for furnishing a Bank Guarantee of Rs. 7,85,56,728/- is not required to be granted at this stage because the precise liability and quantum are disputed and require adjudication. The prayer for appointment of a Court Receiver to collect fees is not required to be granted, since preservation and disclosure of the relevant records would sufficiently protect the Petitioner's monetary claim at this stage. This conclusion does not mean that every factual allegation made by the Petitioner stands finally proved. The extent of actual use of "KIDZEE", the nature and duration of use of "KIDGEE", the amount collected by the Respondent and the final loss, if any, suffered by the Petitioner are matters to be decided on evidence in the appropriate proceedings. The findings recorded in the present order are confined to the material necessary for considering interim protection under Section 9 of the Arbitration and Conciliation Act, 1996.

78. On the material presently available, I am satisfied that the Petitioner has established a prima facie contractual right, a corresponding prima facie breach, a continuing possibility of prejudice to its goodwill and reputation, and balance of convenience in its favour. Interim protection against continued use of the impugned names and against representation of any continuing association with the Petitioner is justified.

79. For the reasons recorded above, the following order is passed:

(i) The Petition is partly allowed.

(ii) Pending commencement and final adjudication of the

arbitral proceedings, the Respondent, either by herself or through her servants, agents, assigns or any person claiming through or under her, is restrained from conducting or implementing the “Kidzee Program” of the Petitioner.

(iii) Pending the arbitral proceedings, the Respondent, either by herself or through any person claiming through or under her, is restrained from using the mark “KIDZEE” or any other mark, name or representation which is deceptively or phonetically similar to “KIDZEE”, including the mark “KIDGEE”, in connection with the school or educational services conducted by her.

(iv) The Respondent shall also not use any name, logo, representation, publicity material or other indicia in any manner suggesting that her school, educational institution, services or programmes are associated, affiliated or connected with the Petitioner.

(v) The Respondent shall remove the mark “KIDZEE”, “KIDGEE”, and all other representations which are deceptively or phonetically similar to the Petitioner’s mark, from the school premises, signboards, advertisements, brochures, uniforms, stationery, websites, social media accounts and other promotional or educational material under her control.

(vi) The Respondent shall preserve all documents, electronic records and other material in her possession or control relating to the operation of the school from 20 January 2020

onwards, including records concerning the use of the marks “KIDZEE” and “KIDGEE”, admission records, fee receipts, bank account statements, marketing and publicity material, photographs, videos, electronic devices and other relevant digital records. The Respondent shall not destroy, alter, conceal or part with such material pending further orders of the learned Arbitral Tribunal.

(vii) Prayer clause (d), seeking complete discovery of all documents and information at this stage, is not granted in the wide form in which it is sought. However, the Respondent shall, within four weeks from today, file an affidavit before this Court, with a copy to the Petitioner, setting out:

(a) the details of the school or educational institution conducted by her from 20 January 2020 onwards;

(b) the names under which the institution has been operated;

(c) the number of students admitted and the fees collected for each academic year from 2020 onwards;

(d) the details of bank accounts used for receiving fees and other amounts relating to the operation of the institution; and

(e) the material showing the use, if any, of the marks “KIDZEE”, “KIDGEE”, or any other similar name or representation.

(viii) Prayer clause (f), seeking a direction to furnish a Bank Guarantee of Rs. 7,85,56,728/-, is rejected at this stage.

(ix) Prayer clause (g), seeking appointment of a Court Receiver to receive the admission fees or other fees of the Respondent, is also rejected.

(x) The observations and findings recorded in this order are prima facie and only for deciding the present Petition under Section 9 of the Arbitration and Conciliation Act, 1996. The learned Arbitral Tribunal shall decide the disputes independently, without being influenced by any observation made in this order.

(xi) The Petitioner shall take steps for commencement of arbitral proceedings in accordance with the arbitration agreement and applicable provisions of law.

(xii) The Petition is disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)