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IN THE HIGH COURT AT CALCUTTA
(ORDINARY ORIGINAL CIVIL JURISDICTION)
ORIGINAL SIDE

CSOS No. 10 of 2024

SOUMENDU SENGUPTA

-VERSUS-

SANJIT MALLICK & ANR.

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Hearing Concluded On: 11.12.2024
Order On: 19.12.2024

Appearance:

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Debanjan Mandal, Adv.
Mr. Sanjiv Kr. Trivedi, Adv.
Ms. Iram Hassan, Adv.
Mr. Deepan Kr. Sarkar, Adv.
Ms. Mahima Cholera, Adv.
... for the plaintiff.

Mr. S.N. Mookherjee, Sr. Adv.
Ms. Yamini Mookherjee, Adv.
Mr. Aritra Basu, Adv.
Mr. Rajesh Upadhyay, Adv.
... for the defendants.

ORDER

1. The plaintiff and the defendants are the Trustees of Financial Inclusion Trust having the registered office at New Delhi but the head office of the

Trust is situated on the 6th Floor at Ek Tower, Premises No. 040702, New Town, Kolkata -700 161.

2. The Trust Deed of Financial Inclusion Trust was entered between the plaintiff and the defendants on 16th March, 2009 with the following Aims and Objects of the Trust which reads as follows:

> ***"(3)*** *a. To eliminate functional illiteracy in India by making education economically relevant and fostering community commitment to education-so that poor families in India are motivated to invest in their children's education, thereby fostering a virtuous cycle of empowerment, opportunity and poverty alleviation.*
>
> *b. To build, promote and own through directly or through equity contribution to micro finance institutions with view to expand micro finance services at the grass root level all over India.*
>
> *c. To participate and promote financial inclusion services in all forms either directly or through institutions in collaboration with Government or others.*
>
> *d. To ensure affordable financial services to the poor through building the capacity of microfinance institutions in the country by bridging the existing gap in demand and supply of financial services.*
>
> *e. To receive donations and grants and put into use for the main object of the Trust (i.e.) build a society based on equity and social justice.*
>
> *f. To promote new entities and organizations by subscriptions to equity or other Suitable instruments, to hive off activities, projects and units of the Trust into separate entities to run and scale up pilot initiatives, in order to achieve greater efficiency and effectiveness, for activities that are in conformity with the objectives of the Trust.*
>
> *g. To invest in the share capital of any company, co-op-society, Trust or any other institution established or existing for the purpose for*

promoting livelihoods and providing credit and other financial services for the benefit of poor households.

h. To invest surplus funds in financial institutions by way of short term and long term investments in the form of fixed deposits, debentures and financial instruments.

i. To lend /donate to companies, societies, Trusts any of its surplus fund.

j. To do such acts and things which may be incidental or necessary to achieve the aforesaid objects including promotion of new organizations in all legal forms both in India and abroad."

3. In the Trust Deed of the Trust, the Investment of Trust Funds has also been prescribed which reads as follows:

"5. Investment of Trust Funds:

(a) The Trustees shall be at liberty to sell and realize any part of the Trust Funds not consisting of moneys and invest the sale proceeds thereof and or any other moneys forming part of the Trust Funds in any of the investments hereinafter mentioned and to vary or transpose any such investments for or into others hereinafter mentioned as they may from time to time think fit including equity in limited liability companies, cooperatives and other institutions with a sole view to the advancement of the main objects.

(b) The Trustees shall be entitled to and are hereby expressly authorized to invest the Trust Funds or any other moneys subject to the trusts of this presents in any securities or investments authorized by law such as the Income tax Act, 1961 and any other local laws for the investment of Trust Funds and in particular, though however, no such investments shall be made, which may otherwise affect, hamper the activities of the trust or in carrying out the object of the trust."

4. Since after registration of Trust Deed, the Trust has been involved in various activities are in consonance with the aims and objects of the Trust. After setting aside the amounts required by the Trust for the said activities, the Trust presently has surplus funds.

5. A meeting of the Trustees held on 13th August, 2024 for further investment proposals in the form of shares with the surplus funds of the Trust. In the said meeting, the Trustees have considered to investment of surplus funds of the Trust with the following entities:

(a). Orion Edutech Private Limited;

(b). Evergreen RecycleKaro Private Limited;

(c). Melcom Foods Private Limited.

6. The Trustees were unanimous in principle insofar as investments in Orion Edutech Private Limited and Evergreen RecyleKaro Private Limited were concerned, since these were found to be in consonance with the Clauses 3(a) and 3 (e) of the Trust Deed. Insofar as Melcom Foods Private Limited is concerned, even though in principle all the Trustees were unanimous on the viability of all the investment proposals but the plaintiff being one of the Trustee was of the opinion to obtain advice from this Court before making the investment with Melcom Foods Private Limited.

Minutes of the Meeting of the Board of Trustees held on 13th August, 2024 with respect to “Investment Proposal for other investment ventures by the Trust” reads as follows:

"5. Investment proposal for other investment ventures by the Trust:

The Chairman then informed the Board that the Trust can also consider investments in another venture in respect of which he has received a proposal. In his view, the Trust can consider investing in such ventures along with the ventures discussed and approved above. A brief outline of the investment proposal is given below:

Melcom Foods Pvt. Ltd.

Melcom Foods Private Limited (Bistro 57) is a Quick Service Restaurant (QSR) serving coffee, shakes & vegetarian snacks at pocket friendly prices. The brand is based out of Delhi and presently has 30 outlets in India. A strong coffee culture is brewing in India. As the Indian economy grows, coffee consumption has become a daily part of "Gen-Z" and "early millennial" habits. However, high price points at existing coffee chains restricts consumers from regularly visiting and with limited food options, it fails to attract non coffee lovers. There is a dire need for a place which serves quality coffee and a variety of food & beverages at affordable prices. Bistro 57 wants to be an integral part of people's regular food habits by serving them delicious food and beverages with love.

Investment Proposal: The Company requires Rs. 4 Crores for opening new company owned outlets in North India, team hiring, Advertisement, Marketing & PR.

The investment of surplus funds in equity shares of Melcom Foods Pvt. Ltd. according to Mr. Arindam Banik, Trustee, is permitted by object 3(h) since equity shares are a financial instrument as defined under Clause 3 of the Indian Accounting Standard 32. That apart, according to the said Trustee, since the Trust is permitted under object 3(i) to even donate its surplus funds to any company, there can be no restriction on acquiring equity shares in a company which is likely to generate sufficient income in the form of dividend, bonus shares, right shares etc., which in turn would be utilized by the Trust for ultimately achieving its various objects. Mr. Sanjit Kumar Mullick, Trustee / Chairman is *also in agreement with Mr. Arindam Banik. In any event, the Trustees are entitled to make such investments under clause 5(b) of the Trust in any securities, which do not otherwise hamper the activities of the Trust or in carrying out its objects.*

However, according to Mr. Soumendu Sengupta, Trustee, the Trust ought to take necessary steps for obtaining the opinion / advice of a competent Court of law before making the investment.

After discussions, all Trustees unanimously:

"RESOLVED FURTHER THAT *in the circumstances mentioned in the discussions above, the majority of the Trustees have decided not to proceed for the time being with the investment in Melcom Foods Pvt. Ltd. in order to enable Mr. Soumendu Sengupta, Trustee, to obtain necessary the opinion/advice/clarification in accordance with law on this aspect.*

After discussions, all Trustees unanimously:

RESOLVED FURTHER THAT *Mr. Soumendu Sengupta, Trustee be and is hereby authorized by the Trustees to apply to the Hon'ble High Court at Calcutta for opinion, directions and advice of the Hon'ble Court on the manner of investment of the trust funds in Melcom Foods Pvt. Ltd. and to do all other acts deeds and things as may be necessary for securing of the opinion of the Hon'ble Court in this connection".*

7. The plaintiff has filed this Originating Summons Suit to determine the following questions:

"a) Can the Financial Inclusion Trust invest in a financial institution in accordance with the provisions of the Trust Deed of the Financial Inclusion Trust dated 16th March 2009, including Clause 3(h) thereof, which in turn may invest such funds in limited liability companies/ other entities or otherwise in any other manner?

b) On a true interpretation of Clause 3(i) of the Trust Deed of the Financial Inclusion Trust dated 16th

March 2009, can the Financial Inclusion Trust invest any of its surplus funds in the shares of companies including limited liability companies/ any other entity?

c) Can investments be made in shares of Melcom Foods Private Limited (if found to be fit and proper after due diligence and enquiry by the Trust) or other suitable ventures by the said Financial Inclusion Trust under Clause 3(i) of the Trust Deed or otherwise?

d) Can investments in Melcom Foods Private Limited (if found to be fit and proper after due diligence and enquiry by the Trust) or other suitable ventures be made under Clause 5(a) of the Trust Deed of the Financial Inclusion Trust dated 16th March 2009 or any other provision of the Trust Deed?

e) Can investments in Melcom Foods Private Limited (if found to be fit and proper after due diligence and enquiry by the Trust) or other suitable ventures be made under Clause 5(b) of the Trust Deed of the Financial Inclusion Trust dated 16 March 2009 or any other provision of the Trust Deed?

f) Can investments in any other company including a limited liability company/other entities be made under Clause 5(a) of the Trust Deed of the Financial Inclusion Trust dated 16 March 2009?

g) Can investments in any other company including a limited liability company/ other entity be made under Clause 5(b) of the Trust Deed of the Financial Inclusion Trust dated 16th March 2009?

h) Such other question or questions as this Hon'ble Court may deem fit and proper to decide and pass appropriate directions, if necessary."

8. The defendants being other two trustees have filed their affidavit and submitted that the queries (a), (b), (f) and (g) raised by the plaintiff permits that the trustees to invest and / or lend all surplus funds in

and /or financial institutions, companies, societies, other trusts and entities by way of short and long term investments in various modes in terms of clauses 3(h) and 3(i) read with Clauses 5(a) and 5(b) of the Trust Deed.

As regard to queries (c), (d) and (e) raised by the plaintiff, if the said queries read with Clauses 3(i), 5(a) and 5(b) of the Trust Deed, it would establish that the Trustees can be permitted to invest in Melcom Foods Private Limited.

9. The trust deed is the primary document that governs the operations and powers of the trustees. Trustees are required to comply with various regulations, including those under the Indian Trusts Act, 1882. Trustees must ensure that any investment is in compliance with applicable laws and regulations, including the guidelines issued by the Reserve Bank of India or the Securities and Exchange Board of India. The trustees have a fiduciary duty to act in the best interest of the beneficiaries. They must ensure that investments are prudent and do not expose the Trust to undue risk.

10. The trustees are intending to invest the surplus funds of the Trust with

a. Orion Edutech Private Limited

b. Evergreen RecycleKaro Private Limited

c. Melcom Foods Private Limited.

11. As regard to the Orion Edutech Private Limited is concerned, the same is in the field of skill development of workforce for diverse industries including healthcare, logistics, retail, apparel, hospitality among others. It employs technologically enabled high and learning techniques for its learners.

12. As regard to the Evergreen RecycleKaro Pvt. Ltd., it focuses on completing the value chain of a circular economy, to recycle waste, extract valuable resources and supply them as many raw materials to manufacturers. Aims of Recylekaro Private Limited to turn today's waste into sustainable resources for tomorrow with a mission to create safe and clean environment.

13. As regard to the Melcom Foods Private Limited (Bistro 57) is concerned, is a Quick Service Restaurant (QSR) serving coffee, shakes and vegetarian snacks at pocket friendly prices.

14. In Clauses 3(h) and 3(i) of the Aims and Objects of the Trust provides for invest surplus funds which reads as follows:

> *"**3(h).** To invest surplus funds in financial institutions by way of short term and long term investments in the form of fixed deposits, debentures and financial instruments.*
>
> ***3(i)** To lend / donate to companies, societies, Trusts any of its surplus fund."*

15. Clause 3(h) provides for financial instruments. Definition of Financial Instrument is provided in the Indian Accounting Standard (Ind AS) 32 which reads as follows:

> ***"A*** *financial instrument is* ***any contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity."***

16. Orion Edutech Pvt. Ltd. is the field of skill development of workforces for diverse industries including healthcare, logistics, retail, apparel, hospitality and other others. It employs technologically enabled high end learning techniques for its learners. It aims to ensure empowerment and sustainable livelihood through holistic skilling, guidance and counselling, to cater to corporates through end to end recruitment and staffing solutions.

    The aims and objects of Orion Edutech Pvt. Ltd. is covered with clauses 3(a) and 3(e) of the aims and objects as well as clauses 5 (a) and 5 (b) of the Deed of Trust with respect to the Investment of Trust Funds.

17. Evergreen RecycleKaro Pvt. Ltd. focuses on completing the value chain of a circular economy, to recycle waste, extract valuable resources and supply them as raw materials to manufacturers. RecycleKaro Pvt. Ltd. is a leading e-waste and lithium-ion battery recycling company in India extracts critical elements like lithium, promoting sustainability and economic growth.

The aims and objects of Evergreen RecycleKaro Pvt. Ltd. is covered with clauses 3(e) of the aims and objects as well as clauses 5 (a) and 5(b) of the Deed of Trust with respect to Investment of Trust Funds.

18. As regard Melcom Foods Private Limited (Bistro 57) is concerned, the said company is a Quick Service Restaurant (QSR) serving coffee, shakes and vegetarian snacks. It comes under the division of Hotels and Restaurants. About 2789 companies are found in the similar activity. The Trustees are of the view that the Trust can be permitted to invest its surplus funds in the said company as the same is covered under Clauses 3 (h) and 3(i) as well as Clause 5(b) of the Trust Deed. The trustees are of the view that the investment in the said company will come under the definition of Financial Instrument. It is true that the definition of Financial Instrument is covered but the aims and objects of the Trust as well as Clauses 5 (a) and (b) are to be read as a whole.

Clause 5(b) provides that *"no such investments shall be made, which may otherwise affect, hamper the activities of the trust or in carrying out the object of the trust*".

The aims and objects of the Trust is to invest for the education to the poor children, to expand micro finance services at the grass root level, to participate and promote financial inclusion services either directly or in collaboration with the Government, to build a society based on equity and social justice, to invest in the share capital or other financial services for the benefit of poor households.

The trustees are harping upon Financial Instrument but this Court is of the view that the trustees have to see whether the objects of the Trust are complied with as a whole or not. Only because as per the word "Financial Instrument", the Trust cannot utilize the surplus amount which is not covered with respect to the actual aims and objects of the Trust.

The business of Melcom Foods Private Limited is coming under the division of Hotels and Restaurants and is not covered for benefits to the poor, education, financial services at the grass root level or to build a society on equity and social justice.

19. Considering the above, this Court gives answer to the queries (a), (b), (f) and (g) in **affirmative** and with respect to queries (c), (d) and (e) in **negative** form.

20. In view of the above, **CSOS No. 10 of 2024** is **disposed of**.

(KRISHNA RAO, J)

p.d/-