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Arb.O.P(Com.Div.) No.340 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.12.2024
Pronounced on : 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

Arb.O.P(Com.Div.) No.340 of 2024

1.S.Dinesh Holla
2.Vanitha
3.Padma Sathish

... Petitioners

VS.

1.M/s.Big Laundry Services Private Limited,
A Company having its Registered Office at
No.1/56, Pudupakkam,
Off. Kelambakkam to Vandalur Road,
Kanchipuram – 603 103.

2.M/s.Umaiya Enterprises Services Private Ltd.,
Asfis, Level 7, Raheja Tower,
No.26-27, M.G.Road, Bengaluru,
Karnataka – 560 001.

... Respondents

PRAYER: Arbitration Original Petition filed under Sections 11(6) of the Arbitration and Conciliation Act, 1996, to appoint any fit and competent person as an Arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996, so as to adjudicate the claim and the dispute between the petitioners and the respondents under the Franchise Agreement dated 18.01.2019 and to direct the respondents to pay the cost of the petition.



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Arb.O.P(Com.Div.) No.340 of 2



For Petitioners : Mr.R.Umashankar
for M/s.Sri & Shankar Associates

For Respondents : Mrs.R.S.Pornima
for Mr.R.A.Rajkumar Jhabakh

ORDER

The petitioners have approached this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator to adjudicate the claim and the dispute between the petitioners and the respondents under Franchisee Agreement dated 18.01.2019.

2.The learned counsel for the respondents have entered appearance. A strong objection is taken by the respondents in respect of referring the dispute to arbitration insofar as M/s.Franchise India Brands Limited is concerned. However, the respondents admit that insofar as the first respondent they are having no objection for the matter being referred for adjudication before a Sole Arbitrator.

3.I have heard Mr.Umashankar, for M/s.Sri and Shankar Associates, learned counsel for the petitioners and Mr.R.S.Pornima for Mr.R.A.Rajkumar Jhabakh, learned counsel for the respondents.



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4.The learned counsel for the petitioner, Mr.Uma Shankar, would contend that by invoking the doctrine of Group Companies, M/s.Franchise India Brands Limited can also be roped into the arbitration process and there is no impediment for proceeding against the non-signatory to the arbitration agreement, in view of the decision rendered by the Hon'ble Supreme Court in *Cox and Kings Limited Vs. SAP India Private Limited and Another* reported in 2024 SCC Online SC 2452.

5.Per contra, Mrs.R.S.Pornima, learned counsel for the respondents would vehemently contend that M/s.Franchise India Brands Limited admittedly is not a party to the arbitration agreement between the petitioners and the first respondent and she would also contend that M/s.Franchise India Brands Limited has no independent legal relationship with the petitioners, for them to be bound by the arbitration agreement between the petitioners and the first respondent. She would further contend that the agreement pertains to granting of franchisee rights to the petitioners by the first respondent and there is absolutely no rhyme or reason to implicate M/s.Franchise India Brands Limited, insofar as the disputes that have arisen between the petitioners and the first respondent.



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6. According to the learned counsel for the respondents, M/s. Franchise India Brands Limited is a total stranger to the petitioners and the attempt to involve M/s. Franchise India Brands Limited in the arbitration case was only to harass the respondents and it amounts to clear abuse of process of law. She would therefore pray for dismissal of the original petition insofar as M/s. Franchise India Brands Limited. However, she would fairly concede that an Arbitrator can be appointed to adjudicate the disputes between the petitioners and the first respondent.

7. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the records by way of typed set of papers filed on behalf of the petitioners.

8. In and by a Franchisee Agreement dated 18.01.2019, the first respondent, as franchiser, has granted licenses to the petitioners herein to have outlets under the brand name Big Laundry – Connect. On a careful reading of the Franchise Agreement, I do not find any reference whatsoever to M/s. Franchise India Brands Limited. The disputes have arisen between



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the petitioners and the first respondent under the said Franchise Agreement dated 11.01.2021. The petitioners have issued a legal notice to the respondent and stating that M/s.Franchise India Brands Limited alone approached the petitioners and recommended the first respondent's proposal offering business services. The said notice also goes on to contend that in view of M/s.Franchise India Brands Limited recommending the name of the first respondent, the petitioners invested a sum of Rs.20,00,000/-, only believing the word of M/s.Franchise India Brands Limited.

9.Ultimately, in and by the said notice, the petitioners called upon the 1st respondent to refund the said amount of Rs.20,00,000/- paid by them, together with interest at 18% per annum and also called upon M/s.Franchise India Brands Limited to pay a sum of Rs.1,18,000/- towards brokerage charges and a further sum of Rs.10,00,000/- towards damages for mental strain, stress and undue hardship.

10.The first respondent sent a reply notice on 06.03.2021, denying the claims of the petitioners. Even in the said reply notice, the first respondent has clearly stated that they are totally ignorant of any arrangements between



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the petitioners and M/s.Franchise India Brands Limited and therefore, they are not bound to respond to the allegations that have been made against M/s.Franchise India Brands Limited in the lawyer's notice dated 06.03.2021. On 12.01.2022, the petitioners have addressed a letter to both the 1st respondent and M/s.Franchise India Brands Limited, nominating an Arbitrator to go into the disputes between the parties. In view of there being no reply to the said notice nominating the Arbitrator, the above original petition has been filed.

11.The case of the petitioners is that the first respondent is a franchiser and amounts are due to them under various heads, arising under the Franchise Agreement between the petitioners and the first respondent. Even in paragraph No.3 of the petition, the petitioners have merely stated that the second respondent is a sister concern of the first respondent, which is also involved in the business activities of the first respondent and the first respondent represented to the petitioners that it operates outlets by way of franchise arrangements to third parties through M/s.Franchise India Brands Limited. There is absolutely no reference to any dealings with the second respondent, leave alone an agreement containing an arbitration clause with



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the second respondent, excepting the bare statement that the second respondent is a sister concern of the first respondent which is also involved in the 'business activities' of the first respondent, I do not find any other references to the second respondent in the entire petition under Section 11(6).

12. Even when the petitioners chose to issue a notice on 11.01.2021, the notice was addressed only to the first respondent and M/s. Franchise India Brands Limited and not the second respondent. Similarly, even while issuing the letter nominating the Sole Arbitrator on 12.01.2022 also, the petitioners did not deem it fit to issue the said notice to the second respondent. Now contending that the second respondent is the sister concern and there also bound to participate in the arbitration proceedings, the present petition has been filed.

13. The Hon'ble Supreme Court in *Cox and Kings Limited Vs. SAP India Private Limited and Another* reported in 2024 SCC Online SC 2452, no doubt recognized the doctrine of 'group of companies' and held that a non-signatory can be bound by an arbitration agreement. However, the



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Hon'ble Supreme Court held that such doctrine can be favourably invoked only when the party intending to bind such non-signatory establishes (i) a tight group structure with strong organisational and financial units, so as to constitute a single economic unit, or a single economic reality, (ii) the conduct of such non signatory party indicating its intend to be bound by the arbitration agreement and (iii) the non signatory party has played an important role in the negotiation or performance of the contract.

14.I am unable to find any of the above factors being even pleaded, leave alone proved by the petitioners. Therefore, merely making a vague statement that the second respondent is the sister concern of the first respondent would not entitle the non signatory second respondent to be referred to arbitration in respect of disputes that have arisen only between the petitioners and the first respondent under the Franchise Agreement dated 18.01.2019.

15.For all the above reasons, the Arbitration Original Petition is partly allowed in the manner following:

(i) Mr.Arun C.Mohan, Advocate, No.D4, III Floor, Ceebros Building, No.32, Cenotaph Road, Teynampet, Chennai – 600 018,



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Ph.No.9600020715, is appointed as Sole Arbitrator to adjudicate the claim and disputes between the petitioners and the first respondent. The learned Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Arbitrator to endeavor to decide the dispute as expeditiously as possible, however, not later than nine (9) months from the date of his entering reference. The original petition is dismissed insofar as the second respondent is concerned.

(ii) There shall be no order as to costs.

21.12.2024

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Index : Yes / No

Internet : Yes / No



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P.B.BALAJI, J.,
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Arb.O.P(Com.Div.) No.340 of 2024

21.12.2024