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

Date of Decision: 21st February, 2024

\+ **CS(COMM) 158/2021 and I.A. 14085/2021, 4733/2022, 7737/2022**

PRESIDENT LALA SHER SINGH MEMORIAL JEEVAN VIGYAN TRUST SOCIETY ..... Plaintiff

Through: Ms. Savita Malhotra, Mr. Suman Malhotra & Mr. Vasudev Vishwakarma, Advocates (M: 8882304687).

versus

SUTLEJ EDUVISION PRIVATE LIMITED ..... Defendant

Through: Mr. Jai Mohan, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CS(COMM) 158/2021 and I.A.s 14085/2021, 4733/2022, 7737/2022

2. ***I.A. 4733/2022*** is an application under Section 8 of the Arbitration and Conciliation Act, 1996 *(hereinafter, '1996 Act')*.

3. The Plaintiff-President, Lala Sher Singh Memorial Jeevan Vigyan Trust Society (*hereinafter 'Society')* has filed the present suit seeking recovery of a sum of Rs.5 crores, along with interest. The case of the Society is that it is operating schools under the brand name 'PRESIDIUM', and 'MOTHER'S PRIDE'.

4. The allegation in the plaint is that one Mr. Akash Gupta was appointed as a treasurer of the Plaintiff-Society. From time-to-time various proposals were considered by the Society for setting up different schools in different areas. In January 2018, one such proposal was mooted by the Defendant-Sutlej Eduvision Pvt. Ltd. for setting up a school at Sector-40,

Gurugram, Haryana in lieu of a one-time interest fee security deposit of Rs.5 crores. It is averred that the said agreement was orally entered into between the Society and Defendant. Following the oral agreement made in January 2018, the Society avers that it transferred an amount of Rs.5 crores from its account to the Defendant's account. As per the Society, the said transfer was made without a formal agreement and was based on the close ties between the officials of the Society and the Defendant at the time.

5. According to the Society, the said agreement never took off and the Plaintiff sought repayment of the said amounts which were not completely paid back, and hence the present suit has been filed. Since 19th November, 2018, it is averred that the Society, started to sever its relations with the Defendant, and it is stated to have received a partial repayment of Rs.10,00,000/- from the Defendant. Further, in February 2019, the Society, through its counsel, sent a legal notice to the Defendant demanding the repayment of the transferred amount. Despite the legal notice, according to the Society, the Defendant failed to make any repayment or respond to the Society’s demands.

6. In the present suit, the Defendant has filed the written statement, but the same has been returned under objections. In the applicaton under Sec.8, on behalf of the Defendant, it is submitted that an Education Collaboration Agreement dated 18th January, 2018 was entered into between the representatives of the parties, and the same consists of an arbitration clause *i.e.* clause 48 which reads as under:-

> *“That all disputes or differences arising between the parties in respect of this Deed or any matter arising or touching this Deed, whether during the subsistence of*

this agreement or thereafter, the same shall be settled by Arbitration by the sole arbitrator appointed in accordance with the provisions of the Indian Arbitration & Conciliation Act, 1996 as amended from time to time. The award of the sole arbitrator shall be final and binding on the parties. The language of the arbitration proceedings shall be English and the venue shall be in Delhi/ New Delhi."

7. The above agreement has been denied by the Plaintiff, as evidenced by both the affidavit of admission/denial dated 29th April, 2022, and the reply to the present application dated 3rd June, 2022. On the other hand, the ld. Counsel for the Defendant submits that the existence of the above agreement between the parties is proved by the resolution passed by the Society dated 16th January, 2018, wherein Mr. Akash Gupta (the Treasurer) was authorized to enter into the said agreement. He further submits that the signatures of Mr. Akash Gupta can also be confirmed from the attendance sheet of the said minutes of meeting placed on record by the Society. The same is extracted below for reference:

ATTENDANCE SHEET

The following members are present in the Meeting of Governing Body of Lala Sher Singh Memorial Jeevan Vigyan Trust Society held on Tuesday, 16th Day of January, 2018 at 11:30 A.M. at the Registered office at Sector-22, Phase-I, Dwarka, New Delhi-110075

S. No.	Name of Member	Designation	Signatures
1	Mr. G S Matharoo	President	
2	Mr. Chander Bhanu Mishra	Vice - President	
3	Mr. Anil Kumar Goel	Secretary	
4	Mr. Akash Gupta	Treasurer	
5	Ms. Mamta Nanda	Member	Mamta Nanda

Signature Not Verified
Digitally Signed By:RAHUL
Signing Date:23.02.2024 11:58:32

8. He further submits that the subsequent resolution and the minutes of the meeting dated 2nd April, 2018, which record the absence of Mr. Akash Gupta and state that the agreement never took off, are, according to the Defendant, fabricated documents. Hence, the dispute deserves to be referred to arbitration.

9. On behalf of the Society, Ms. Malhotra, the ld. Counsel, submits that the Society had proposed to invest a sum of Rs.5 crores with the intention of establishing a school. However, since the said school had already been established, the Society did not wish to proceed with the proposals. This position is disputed by the ld. Counsel for the Defendant.

10. Heard. After having perused the documents and the minutes of the meeting dated 16th January, 2018, it is evident from the resolution that Mr. Akash Gupta was authorized to enter into the said Education Collaboration Agreement dated 18th January, 2018. The relevant extract of the said Minutes is set out below:

> *"2. **AUTHORIZATION ON BEHALF OF THE SOCIETY TO ENTER INTO EDUCATION COLLABORATION AGREEMENT***
>
> *The members discussed for entering into Education Collaboration Agreement with Sutlej Eduvision Private Limited for running schools in joint venture at their School Site in Sector-40, Gurgoan, Haryana in the name of 'Presidium'. The society decided to provide refundable Security amount of Rs. 5 Crores (Rupees Five Crores Only) for use of the premises and infrastructure belonging to Sutlej Eduvision Private Limited. The members discussed and passed the following resolution:*

*'**RESOLVED THAT**' approval of the governing body be and is hereby accorded to enter into Education Collaboration Agreement with Sutlej Eduvision Private Limited for running schools in joint venture at their School Site in Sector-40, Gurgoan, Haryana in the name of 'Presidium'. The society decided to provide refundable Security amount of Rs. 5 Crores (Rupees Five Crores Only) for use of the premises and infrastructure belonging to Sutlej Eduvision Private Limited."*

*"**RESOLVED FURTHER THAT** Mr. Akash Gupta, Treasurer of the Society be and is hereby authorized on behalf of the society to sign and execute necessary agreements, papers, documents, deeds and finalize the terms and conditions of the agreement and do all such acts, deeds and things as may be necessary to give effect to the aforesaid resolution."*

3. AUTHORIZATION ON BEHALF OF THE SOCIETY TO ENTER INTO EDUCATION COLLABORATION AGREEMENT

The members discussed for entering into Education Collaboration Agreement with Presidium Junior Education Private Limited for running schools in joint venture at their School Site in Palam Vihar, Gurgoan, Haryana in the name of 'Presidium'. The society decided to provide Refundable Security amount of Rs. 5 Crores (Rupees Five Crores Only) for use of the premises and infrastructure belonging to Presidium Junior Education Private Limited. The members discussed and passed the following resolution:

*"**RESOLVED THAT** approval of the governing body be and is hereby accorded to enter into Education Collaboration Agreement with Presidium Junior Education Private Limited for running schools in joint*

> *venture at their School Site in Palam Vihar, Gurgoan, Haryana in the name of 'Presidium'. The society decided to provide Refundable to Security amount of Rs. 5 Crores (Rupees Five Crores Only) for use of the premises and infrastructure belonging to Presidium Junior Education Private Limited."*
>
> *"**RESOLVED FURTHER THAT** Mr. Akash Gupta, Treasurer of Society be and is hereby authorized on behalf of the society to sign and execute necessary agreements, papers, documents, deeds and finalize the terms and conditions of the agreement and do all such acts, deeds and things as may be necessary to give effect to the aforesaid resolution."*

The allegation that the agreement did not materialize would not affect the decision to refer the parties to arbitration under Section 8 of the 1996 Act, as that determination would be based on the merits of the dispute. In view of the above, this Court holds that it cannot be disputed that the Education Collaboration Agreement dated 18th January, 2018, which contains an arbitration clause, was entered into by the parties.

11. Thus, following the decision of the Supreme Court in ***Sundaram Finance Ltd. v. T. Thankam, (2015) 14 SCC 444***, it is the settled position that once there is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the agreement, approaches the Court and the other party, in terms of the Section 8 of the 1996 Act, moves the Court for referring the parties to arbitration before the first statement on the substance of the dispute is filed, in view of the peremptory language of Section 8 of

the 1996 Act, it is obligatory for the Court to refer the parties to arbitration in terms of the agreement.

12. Thus, the application ***I.A. 4733/2022*** filed by the Defendant is allowed. Accordingly, in the facts and circumstances of the present case, the matter deserves to be referred to arbitration. With the consent of parties, **Ms. Kajal Chandra, Advocate,** who is present in Court, is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

13. Needless to add, any observations made in this order shall not have any bearing on the merits of the matter. The arbitral proceedings shall take place under the aegis of Delhi International Arbitration Centre *(hereinafter, 'DIAC')*. The fee payable to the ld. Arbitrator shall be in terms of the Fourth Schedule of the 1996 Act, as modified by the DIAC Rules.

14. Copy of the present order be emailed to Secretary, DIAC on email id-delhiarbitrationcentre@gmail.com.

15. List on 18th March, 2024 before the ld. Sole Arbitrator.

16. The present suit, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 21, 2024
mr/dn