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

\+ ARB.P. 184/2025

M/S FRANCHISE INDIA CONSULTANT PVT. LTD. .....Petitioner

Through: Mr. Ayush Jain and Mr. Keshav Srivastava, Advs.

versus

M/S. TIRUPPATI ENTERPRISES-PROPRIETORSHIP FIRM AND ANR .....Respondents

Through: Mr. Anandh Kumar and Mr. Rajesh Sahni, Advs.

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% 14.05.2025

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (‘A&C Act’) seeking appointment of a Sole Arbitrator to adjudicate the disputes that have arisen between the parties.

2. It is stated that the disputes arise out of an Advantage Business Advisory Agreement dated 15.07.2023 executed between the Petitioner, and Respondent No.1, wherein Clause 15 of the said agreement contains an arbitration clause.

3. The Petitioner is a consultancy firm engaged in facilitating franchise and branding opportunities. Respondent No.1 is a proprietorship concern of Mr. Amit Srivastava and Respondent No.2, Shree Tirupati Bite Station Pvt. Ltd., is a private limited company promoted by Mr. Amit Srivastava, with

entire shareholding held by him and his wife.

4. It is stated that under the agreement, the Petitioner introduced the brand "HONEYMAN & MELLEFERA" to the Respondents, and facilitated the execution of a Master Franchise Agreement dated 06.12.2023. It is stated that Respondent No.1 negotiated the deal in the name of Respondent No.2 as master franchisee for the territories of Mumbai and Thane.

5. It is stated that Respondent no. 2 is a company promoted by Amit Srivastava and its only shareholders are Mr. Amit Srivastava and his wife.

6. It is stated that Respondent No.2 was incorporated after the business advisory agreement dated 15.07.2023 was executed between the parties to enable Respondent No.1 to exploit the brand, and thus, Respondent Nos. 1 and 2 are jointly and severally liable to the Petitioner.

7. It is stated that a sum of Rs. 5,90,000/- inclusive of GST is recoverable from Respondent nos. 1 and 2 jointly and severally. It is stated that a legal notice dated 18.09.2024 was issued and since the disputes remain unresolved an invocation notice dated 07.10.2024 was issued invoking arbitration under Section 21 of A&C Act.

8. In light of the foregoing facts, the Petitioner has approached this Court for the appointment of a Sole Arbitrator under Section 11(6) of the Act.

9. Learned counsel for the Petitioner states that in the reply filed by Respondent no. 2 to the petition, the said Respondent has objected to its impleadment on the ground that there is no privity of contract between the Petitioner and Respondent No. 2. He, however, states that in view of the judgment of the Supreme Court in **Asf Buildtech Pvt. Ltd. v. Shapoorji**

Pallonji and Company Private Limited[1], the question of whether a non-signatory is bound by an arbitration agreement and can be impleaded as a party to the arbitral proceedings is not to be conclusively decided at the Section 11 stage but is within the domain of the arbitral tribunal. Relevant paras read as under:

> **"109.** From the above exposition of law, it can be seen that there is nothing within the scheme of the Act, 1996, which prohibits or restrains an arbitral tribunal from, impleading a non-signatory to the arbitration proceedings on its own accord. So long as such impleadment is undertaken upon a consideration of the applicable legal principles — including, but not limited to, the doctrines of 'group of companies', 'alter ego', 'composite transaction', and the like — the arbitral tribunal is fully empowered to summon the non-signatory to participate in the arbitration. This autonomy stems from the broad jurisdiction conferred upon arbitral tribunals under the Act, 1996 to rule upon their own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, as enshrined under Section 16. The impleadment of a non-signatory, being fundamentally a question of jurisdiction and consent, falls squarely within the province of the tribunal's powers, free from any statutory prohibition."
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> **113.** It is well within the jurisdiction of the Arbitral Tribunal to decide the issue of joinder and non-joinder of parties and to assess the applicability of the Group of Companies Doctrine. Neither in Cox and Kings (I) (supra) nor in Ajay Madhusudhan (supra), this Court has said that it is only the reference courts that are empowered to determine whether a non-signatory should be referred to arbitration. The law which has developed over a period of time is that both 'courts and tribunals' are fully empowered to decide the issues of impleadment of a non-signatory and Arbitral Tribunals have been held to be preferred forum for the adjudication of the same.
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> **116.** Recently, a coordinate bench of this Court in Adavya Projects Pvt. Ltd. v. Vishal Structural Pvt. Ltd., 2025 INSC 507, also held

[1] 2025 SCC OnLine SC 1016

> that an arbitral tribunal under Section 16 of the Act, 1996 has the power to implead the parties to an arbitration agreement, irrespective of whether they are signatories or non-signatories, to the arbitration proceedings. This Court speaking through P.S. Narasimha J. observed that since an arbitral tribunal's jurisdiction is derived from the consent of the parties to refer their disputes to arbitration, any person or entity who is found to be a party to the arbitration agreement can be made a part of the arbitral proceedings, and the tribunal can exercise jurisdiction over him. <u>Section 16 of the Act, 1996 which empowers the arbitral tribunal to determine its own jurisdiction, is an inclusive provision that covers all jurisdiction question including the determination of who is a party to the arbitration agreement, and thus, such a question would be one which falls within the domain of the arbitral tribunal.</u> It further observed that, although most national legislations do not expressly provide for joinder of parties by the arbitral tribunal, yet an arbitral tribunal can direct the joinder of a person or entity, even if no such provision exists in the statute, as long as such person or entity is a party to the arbitration agreement. Accordingly, this Court held that since the respondents therein were parties to the underlying contract and the arbitration agreement, the arbitral tribunal would have the power to implead them as parties to the arbitration proceedings in exercise of its jurisdiction under Section 16 of the Act, 1996."

(Emphasis Supplied)

10. Learned counsel for the Petitioner further states that Respondent no. 1 has not disputed the existence of the arbitration agreement.

11. This Court is of the view that the question of whether Respondent No. 2 is bound by the arbitration agreement and whether it can be impleaded in the arbitral proceedings, being a mixed question of law and fact, falls within the jurisdiction of the arbitral tribunal and shall be determined by the tribunal in accordance with law. At this stage, the Petitioner has placed on record sufficient facts which substantiate the plea of the Petitioner that Respondent no. 2 is a direct and intended beneficiary of the agreement dated 15.07.2023, at the instance of Respondent no. 1.

12. In reply, learned counsel for the Respondents states that the Respondent No. 2 reserves its rights to raise all pleas and defences qua arbitrability as well as absence of privity of contract in the arbitration. He states that he also reserves on behalf of Respondent no. 1 the right to oppose the claims of the Petitioner on merits.

13. Considering that the value of Petitioner's claim is 5,90,000/-, it has been put to the parties if they are willing to consider mediation before the arbitral tribunal enters reference.

14. Both parties state that parties are willing to consider mediation without prejudice to their respective rights and contentions.

Learned counsel for the Petitioner states however an order for appointing an Arbitrator be also passed disposing of this petition.

15. Accordingly, with the consent of the parties, in the first instance, the matter is referred to Delhi High Court Mediation and Conciliation Centre ('Mediation Centre'). The parties are directed to appear before Mediation Centre on **22.05.2025** at **03:30 PM.**

16. The parties and the learned Mediator are directed to conclude the mediation proceedings on or before 15.08.2025 and report the final outcome of the mediation centre to the Secretary DIAC, by the said date.

17. In the facts of this case, it is admitted by the parties that there exists a valid arbitration agreement between Petitioner and Respondent no. 1. With respect to Respondent No.2, and notwithstanding the objections raised, the question of its joinder is left open for adjudication by the arbitrator, as held in **Asf Buildtech v. Shapoorji Pallonji** (supra). Accordingly, the parties are referred to arbitration under the aegis of DIAC and as per the Rules of DIAC. The sole Arbitrator will be appointed by DIAC. However, keeping in

view the reference to mediation, it is directed that arbitrator will enter reference after the final report on mediation.

18. It is directed that in case parties have not settled the matter in mediation by 15.08.2025, the Petitioner is directed to file its statement of claim with the DIAC on or before 29.08.2025. It is directed that if the mediation fails, the DIAC will proceed to appoint a Sole arbitrator and constitute the arbitral tribunal on or before 29.08.2025. It is directed that the matter be listed before the sole Arbitrator on 29.08.2025 at 10:30 AM for a preliminary hearing at DIAC.

19. Needless to state that all pleas of parties qua claims and counter-claims including the joinder of Respondent no. 2 are left open and shall be considered in arbitration proceedings.

20. Copy of the Order be sent to the Organizing Secretary of the Delhi High Court Mediation & Conciliation Centre and DIAC for information and compliance.

21. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

MAY 14, 2025/hp/AKP