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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1701/2024**
SODEXO INDIA SERVICES PRIVATE LIMITED (FORMERLY
KNOWN AS SODEXO FOOD SOLUTIONS INDIA PRIVATE
LIMITED)

.....Petitioner

Through: Mr. Saswat Pattnaik, Mr. Akshay
Sinha, Advs.

versus

SHRI JAIPAL SINGH SHARMA TRUST AND OTHERS & ORS.

.....Respondent

Through: Mr. Karunesh Tandon, Mr. Abhishek
Singh, Mr. Atul Kumar Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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14.07.2025

1. This is a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudication of disputes between the parties.
2. The case of the petitioner is that the petitioner entered into a Food Services Agreement dated 12.09.2022 with G.S. Medical College [a unit of Shri Jaipal Singh Sharma Trust, a trust incorporated under the Indian Trust Act, 1882 and Uttar Pradesh Charitable Endowments (Extension of Powers) Act, 1950].
3. The said Agreement contains an arbitration clause being clause 21 which reads as under:-

“21. ARBITRATION



In the event of any dispute or difference between the parties hereto, whether arising during the currency or after the completion of this Agreement, or after the determination.. thereof. (whether for breach or for any other reason) in regard to any matter or thing of whatsoever nature arising out of this Agreement or in/ connection therewith then such dispute or difference shall be settled in accordance with provisions of the Arbitration and Conciliation Act, 1996, or any modification or any succeeding Act. Both parties shall mutually agree to appoint a sole arbitrator to preside over the dispute and if the parties are unable to agree over the appointment of sole arbitrator, then each party shall appoint one arbitrator and the two arbitrators so appointed shall appoint a third presiding arbitrator. The proceedings shall be conducted in English and held in New Delhi. The decision of the arbitrators shall be final and binding on the parties.”

4. Since there were disputes between the parties, the petitioner invoked the arbitration *vide* legal notice dated 05.06.2024 which was duly replied to by the respondents on 02.07.2024, wherein the respondents denied the existence of payable amount and stated that, there is no dispute which could be referred to the arbitrator for adjudication, as the termination was a result of a failure of the Petitioner in performing its contractual obligations in providing the required services. Furthermore, the Respondents did not agree with the names suggested by the Petitioner for the appointment of arbitrator and instead proposed their names for the appointment. Thereafter, the present petition has been filed.

5. Mr. Tandon, learned counsel appearing for the respondents, does not dispute the arbitration clause but has taken an objection that, in the absence of all the trustees of Shri Jaipal Singh Sharma Trust being impleaded, the present petition will not lie as respondent no.1 i.e., Shri Jaipal Singh Sharma Trust is not a “legal entity” meaning thereby a situation where a business or



organization is not recognized as a distinct legal person and hence, its owner or members are personally liable for debts and obligations and need to be impleaded.

6. It is further stated that the petition is not maintainable against respondent Nos. 2-5 as there is no arbitration Agreement between petitioner and respondent no. 2 to 5 as required under Section 7 of the Act. Further, no notice under Section 21 of the Act has been served upon the trustees.

7. He relies on the provisions of Order 31 Rule 2 of the CPC and the judgment of this Court in **“Golesh Kumar versus Ganesh Dass Chawla Charitable Trust (Regd.) 2006 SCC OnLine Del 487”** more particularly on paras 5 and 6 which reads as under:-

“5. The parties were permitted to lead evidence and finally the Trial Court answered issue No. 1 against the defendant and in favour of the plaintiff but decided issue No. 2 against the plaintiff and in favour of the defendant and declined to record findings on issue nos. 3 and 4 in view of the findings recorded on issue No. 2 vide its judgment and decree dated 31st March, 2001 giving rise to the filing of the present appeal. The learned Trial Court while relying upon the judgment of the Calcutta High Court in the case of Norendra Nath Kumar and Another v. Atul Chandra Bandhopadhyaya and others AIR 1918 Calcutta 810 and Madras High Court in the case of Vedakannu Nadar & Ors. v. V. Nanguneri Taluk Singikulam Annadana Chatram & Ors. AIR 1938 Madras 982 while referring to the provisions of Order 31 Rule 2 held that in view of EX PW1/D1 the agreement which had been executed between the parties and was signed on behalf of the registered Charitable Trust by one of its trustees it was obligatory upon the plaintiff to implead all the 14 members of the trust as defendants to the suit. This finding can hardly be assailed in law. The provisions of Order 31 Rule 2 make it mandatory for a plaintiff to join all the trustees as parties to the suit. In this case



there are several trustees of the trust and it has been proved on record and, in fact, was an admitted fact on the basis of Ex PW1/D1 that it is a registered trust and has number of trustees. There was no escape for the plaintiff but to join/implead all these trustees as defendants in the suit. We have no reason to differ with the view taken by the Calcutta High Court and Madras High Court in the cases of Norendra Nath & Another (supra) and Vedakannu Nadar & Ors. (supra).

6. The Courts have insisted upon due compliance to the provisions of Order 31 Rule 2 of the Court. Even where suits are instituted by and on behalf of the trust, it was held that willing trustees should be joined as plaintiffs while all other unwilling trustees should be joined as defendants. Thus, the suit without inclusion of all the trustees members of the trust would not be maintainable where either a suit is instituted or is filed against the trust.”

8. Learned counsel for the respondents also relies on **“Shri Cutchi Visa Oswal Derawasi Jain Pathshala through its Chairman Virchand Koonverji Korani versus Shri Cutchi Visha Oswal Derawasi Jain Mahajan, through its Chairman, Popatlal Bharmal Sah & Anr., 2004 SCC OnLine Bom 823”** more particularly on paras 40 and 41 which reads as under:-

“40. At the outset, let me consider various contentions raised by respondent No. 1-Mahajan Trust as regards locus of appellant-Pathshala Trust to filed and maintain suit in question. The suit has been filed by the appellant-Trust register under the Trust Act. The law is well settled that all co-trustees must be joined in filing suit unless the instrument of the Trust otherwise provides. No one single co-trustee even if he be as a managing trustee, unanimously chosen by the co-trustees, can maintain such a suit without other trustees being parties to it. If any one or more are unwilling to be joined the suit as plaintiff or for some reason or the other it is not possible to join them as plaintiff, they must be impleaded as defendants so that all the co-



trustees could be before the Court see (Ä.I.R. 1934 All. 1)6; (A.I.R. 1953 Bom. 92)7; (Shaikh Abdul Kayum v. Mulla Alibhai)8, A.I.R. 1963 S.C. 309; (A.I.R. 1973 Guj. 113)9; and (Shrikrishna v. Ramnarayan) 10, 1983 Mh.L.J 248.

41. Considering the absence of all other co-trustees in the suit, the suit prima facie; is bound to fail on this technical ground. If that be so, can it be said that prima facie case exists in favour of the plaintiff/appellant-Pathshala trust. Answer has to be in negative.”

9. I have heard learned counsels for the parties.

10. In the present case, the agreement has been signed by Sh. Vikas Sharma, professing himself to be the authorized signatory of respondent No.1, i.e., the trust.

11. The notice was served on 05.06.2024 upon the trust as well as its managing trustees. The notice was duly replied to, on 02.07.2024, wherein the respondents took objection regarding the applicability of the arbitration clause, but no objection was raised with regard to non-impleadment of all the trustees.

12. Additionally, the judgments relied upon by the learned counsel for the respondents are based on provisions of Order 31 Rule 2 of CPC and it is a settled proposition that the provisions of Civil Procedure Code, 1908 are not applicable to arbitration proceedings.

13. Lastly and most importantly, the Hon’ble Supreme Court in “**Adavya Projects (P) Ltd. v. Vishal Structurals (P) Ltd., 2025 SCC OnLine SC 806**” more particularly in para 40 has observed as under: -

“40. Summary of Conclusions: Our legal analysis of the issues that we set out above, as well as our findings in the facts of the given appeal, can be stated as follows:



I. A notice invoking arbitration under Section 21 of the ACA is mandatory as it fixes the date of commencement of arbitration, which is essential for determining limitation periods and the applicable law, and it is a prerequisite to filing an application under Section 11. However, merely because such a notice was not issued to certain persons who are parties to the arbitration agreement does not denude the arbitral tribunal of its jurisdiction to implead them as parties during the arbitral proceedings.

II. The purpose of an application under Section 11 is for the court to appoint an arbitrator, so as to enable dispute resolution through arbitration when the appointment procedure in the agreement fails. The court only undertakes a limited and prima facie examination into the existence of the arbitration agreement and its parties at this stage. Hence, merely because a court does not refer a certain party to arbitration in its order does not denude the jurisdiction of the arbitral tribunal from impleading them during the arbitral proceedings as the referral court's view does not finally determine this issue.

III. The relevant consideration to determine whether a person can be made a party before the arbitral tribunal is if such a person is a party to the arbitration agreement. The arbitral tribunal must determine this jurisdictional issue in an application under Section 16 by examining whether a nonsignatory is a party to the arbitration agreement as per Section 7 of the ACA.

IV. In the facts of the present appeal, respondent nos. 2 and 3 are parties to the arbitration agreement in Clause 40 of the LLP Agreement despite being non-signatories. Their conduct is in accordance with and in pursuance of the terms of the LLP Agreement, and hence, they can be made parties to the arbitral proceedings.”

14. In the present case, the authorized signatory had signed the agreement for and on behalf of the trust.



15. The provisions of CPC requiring all the trustees to be impleaded is not a *sine qua non* for filing a petition under Section 11 which is only seeking referral of disputes between the parties arising out of an agreement to arbitration for the dispute resolution.

16. The learned Arbitrator, in exercise of powers under Section 16 of the Act, has the jurisdiction to decide on the maintainability of the petition, including whether the petition is not maintainable due to non-impleadment of all necessary parties, such as all the trustees and/ or adding the trustees as parties.

17. The same need not be decided by the referral Court while deciding a petition under Section 11 of the Act in light of “***SBI General Insurance Co. Ltd. v. Krish Spinning, 2024 INSC 532***”.

18. For the said reasons, the present petition is allowed and the following directions are issued:-

- i) Mr. Jai Sahai Endlaw (Advocate) (Mob. No.9811122114) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the ‘DIAC’).
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other



- preliminary objection including impleadment of the trustees, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- vi) The parties shall approach the learned Arbitrator within two weeks from today.
19. The present petition is disposed of in the aforesaid terms.

JULY 14, 2025/ (MS)

JASMEET SINGH, J