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

% **Date of Decision: 20.12.2024**

+ **ARB.P. 1742/2024**

PRIME CLASS KASHMIR (THROUGH ITS DIRECTOR MR.
YASIR NISAR)Petitioner

Through: Ms. Eshna Kumar and Mr. Harpreet
Singh Malhotra, Advs.

versus

AAKASH EDUCATIONAL SERVICES LIMITEDRespondent

Through: Mr. Pranav Proothi and Ms. Manasi
Chatpalliwar, Advs.

**CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA**

SACHIN DATTA, J. (ORAL)

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, seeks constitution of an Arbitral Tribunal to adjudicate the disputes between the parties.
2. The petitioner herein is a partnership firm which entered into a "Franchise Agreement" dated 15.05.2023 with the respondent.
3. The disputes between the parties arise out of the said franchise agreement. It is alleged by the petitioner that the respondent is guilty of breach of the terms of the said agreement, despite the petitioner paying exorbitant franchise fees to the respondent.



4. The Franchise Agreement contains an arbitration clause as under:-

“8.2 Dispute Resolution

In case of any dispute or difference between Aakash Byjus Prime Classes Franchisee and Company regarding the interpretation of these terms and conditions, non-payment of any claim or any dispute arising out of or in pursuant to these terms and conditions, the same shall be referred to Sole Arbitrator who shall be appointed by the Managing Director of Aakash Educational Services limited. The proceedings shall be conducted at New Delhi under the provisions of Arbitration & conciliation Act and the Courts at Delhi only shall have the jurisdiction over the matter. If an Arbitrator to whom the matter is referred refuses to act or for any reason, does not enter the reference or after entering into the reference, proceedings are abandoned or kept in abeyance or not proceeded with, it shall be lawful for the Managing Director of Aakash Educational Services Limited to appoint another person to act as Arbitrator in the manner aforesaid. Such person shall be entitled to proceed with reference from the stage at which was left by his/her predecessor, if both the parties consent to this effect, failing which the Arbitrator will be entitled to proceed de novo.

Any deviation or non-compliance with the above terms and conditions and any premature termination of the affiliation contract will result in an outright forfeiture of the non-refundable one-time Aakash Byjus Prime Classes Franchisee fees with company which has been paid at the inception of the affiliation and thereafter Para No. 5.3 (c) will be executed against the defaulter.

In case, the Aakash Byjus Prime Classes Franchisee decides to prematurely discontinue the affiliation, he/it/they will be liable and duty bound to get the remaining course of the enrolled students fully completed up to their best satisfaction and also up to the satisfaction of the Company.

Any type of claims by any student or his/her parents/representatives will have to be borne by the Aakash Byjus Prime Classes Franchisee.

All disputes between the Aakash Byjus Prime Classes Franchisee and the Company will be subject to the jurisdiction of courts at New Delhi.”

5. It is the petitioner’s case that ever since the outset, the respondent acted in flagrant breach in terms of the franchise agreement and disregarded and acted in contravention of its obligations thereunder, *inter alia* as regards the mode of holding classes and/or making available the requisite teachers/faculty to conduct classes at the desired frequency.



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6. It is the petitioner's case that the franchise agreement was terminated on 31.05.2024 without any reasonable cause.

7. Disputes having arisen between the parties, a legal notice dated 08.07.2024 was sent by the petitioner to the respondent whereby the petitioner also sought to invoke the arbitration clause. The relevant extract of the legal notice is as under:-

"10. That it is apposite to state here, Given these breaches, My Client is entitled to seek damages for the substantial losses incurred due to your actions for which my client reserves his right to initiate appropriate proceedings before the Hon'ble Court against you. Therefore, we hereby demand the initiation of arbitration proceedings as per the dispute resolution clause in the franchise agreement.

11. That the aforementioned disputes / claims which have arisen inter-se parties are required to be adjudicated upon by the arbitrator who is sought to be appointed in the matter in terms of Arbitration Clause in the Franchise Agreement and My Client through the medium of this notice is requesting you for appointment of arbitrator as envisaged under the Act.

12. That in view of Arbitration Clause Article 8.2 of the Franchise agreement dated 15-05-2023, it has been clearly mentioned that the arbitration shall be conducted in accordance with Arbitration procedure, and as per Section 10 of the Arbitration & Conciliation Act 1996, the arbitral tribunal shall consist of a sole arbitrator in case the parties fail to determine the number of Arbitrators. Therefore, through the medium of this notice, you are hereby requested to appoint/ in consultation with My Client, any person as Arbitrator so that arbitral proceedings are started and all the Disputes / Differences between the parties are settled.

13. That, as a result of Aakash's actions, My Client has suffered considerable financial damages and reputational harm. It is evident that Aakash's conduct is primarily motivated by monetary gain rather than a genuine commitment to the students' educational welfare.

14. That, kindly consider this notice as our formal request for the appointment of an arbitrator to resolve this dispute. We expect your cooperation in nominating a mutually agreeable arbitrator within 30 days from the date of this notice. Failing which, we will proceed to approach the Hon'ble Court for appointment of Arbitrator and take necessary legal actions to protect My Client's interests."



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8. The respondent in his reply to the aforesaid legal notice expressed its inability to give consent as regards appointment of the Sole Arbitrator as proposed by the petitioner. Consequently, the present petition has been filed by the petitioner.

9. Learned counsel for the respondent does not dispute the existence of the Arbitration Clause in the Franchise Agreement, however, he seeks to object to the present petition on the basis that the petitioner being an unregistered partnership firm is barred from pursuing the present proceedings. In this regard, reliance is placed on Section 69 of the Indian Partnership Act, 1962 and the Judgment of the Supreme Court in *Premlata and Ors. v. Ishar Dass Chaman Lal and Ors.*, AIR 1995 SC 714.

10. The contentions sought to be raised by the petitioner on the merits of the matter are also strongly refuted by learned counsel for the respondent.

11. This court does not find any merit in the contention of the respondent that the petitioner is precluded from initiating arbitration proceedings merely on account of the fact, that it is an unregistered partnership firm.

12. The legal position in this regard has been a subject matter of consideration in numerous judicial pronouncements including in the cases of *Umesh Goel v. Himachal Pradesh Cooperative Group Housing Society Ltd.*, (2016) 11 SCC 313, *Hari Om Sharma v. Sauman Kumar Chatterjee and Another*, 2024 SCC OnLine Del 7494, *Md. Wasim and Another v. Bengal Refrigeration and Company and Others*, 2022 SCC OnLine Cal 3035 and *M/s Jayamurugan Granite Exports v. M/s SQNY Granite and Another*, 2015 SCC OnLine Mad 6848.

13. In *Umesh Goel* (supra) while construing the scope of Section 69 it has been held, by the Supreme Court as under:-



“21. Based on the close analysis of Section 69 in its different parts, we are able to discern and hold that in order to attract the said section, first and foremost the pending proceeding must be a suit instituted in a court and in that suit a claim of set-off or other proceedings will also be barred by virtue of the provision set out in sub-sections (1) and (2) of Section 69 as specifically stipulated in sub-section (3) of the said section. Having regard to the manner in which the expressions are couched in sub-section (3), a claim or set-off or other proceedings cannot have independent existence. In other words, the foundation for the application of the said sub-section should be the initiation of a suit in which a claim of set-off or other proceedings which intrinsically connected with the suit arise and not otherwise.”

14. It has been further held in **Umesh Goel**(Supra) that:-

“32..... Keeping the said principle in mind when we consider the said submission, we have clearly held as to how a reading of Section 69 as a whole does not permit of any interpretation that would cover arbitral proceedings, de hors filing of a suit in a court and that too in respect of a right under a contract governed by the provisions of the Partnership Act, especially after the coming into force of the 1996 Act and the proceedings governed by the special features contained in the said Act.”

15. In **Hari Om Sharma** (supra) while relying upon **Umesh Goel** (Supra) it has been held by this Court as under:-

“69. The Apex Court in *Umesh Goel v. Himachal Pradesh Cooperative Group Housing Society Ltd.*, (2016) 11 SCC 313, held that the bar of Section 69 of Partnership Act does not come within the expression “other proceedings” as used in Section 69(3) of the Partnership Act. Therefore, the ban imposed under Section 69 has no application to the arbitral proceedings.

70. Similar observation has been made in the case of *Ananthesh Bhakta v. Nayana S. Bhakta*, (2017) 5 SCC 185, wherein the Apex Court referred to Section 69 of the Partnership Act and observed that the bar of Section 69 is limited to the Courts and the Civil Suit and is not attracted where the disputes inter-se the partners, are referred to arbitration. So long as the Partnership Deed contains Clause providing for reference of disputes inter-se the partners to arbitration, non-registration of the Partnership Firm, is no ground to reject the reference to arbitration.

71. Therefore, the contention of the respondents that the arbitral proceedings were non-est being barred under Section 69 of the Partnership Act, is not tenable and is without any merit.”



16. In *Md. Wasim* (supra) it has been observed as under –

“10. The objection of the respondents is in respect of the bar contained under Section 69 of the Act of 1932. Sub-sections (1) and (2) of Section 69 of the Act of 1932 restrict filing of suit by any person as a partner of unregistered firm. Sub-section (3) of Section 69 of the Act of 1932 makes the provisions of Sub-sections (1) and (2) applicable also to a claim of suit of or “other proceedings” to enforce a right arising from a contract. Hon’ble Supreme Court in the matter of Umesh Goel v. Himachal Pradesh Cooperative Group Housing Society Limited reported in (2016) 11 SCC 313 has settled that the arbitral proceedings will not come under the expression “other proceedings” of Section 69(3) of the Act of 1932 and that the ban imposed under Section 69 can have no application to arbitration proceedings as well as the arbitral award. Madras High Court in the matter of Jayamurugan Granite Exports v. SQNY Granites reported in (2015) 4 LW 385 has considered the similar issue and held that:

“38. If these observations are looked in the context of Section 69 of the Partnership Act, the bar created for institution of the suit or other proceedings is in respect of the same being instituted in any “courts”. But the aforesaid observation shows that the power has to be exercised under Section 11 of the 1996 Act by the Chief Justice or his delegate and not by the Court. In fact, it is observed in paragraph-20 that there are a variety of reasons as to why the Supreme Court cannot possibly be considered to be “court” within the meaning of Section 2(1)(e) even if it retains seisin over the arbitral proceedings. The Judgment is to the effect that the Chief Justice does not represent the High Court or the Supreme Court, as the case may be, when exercising power under Section 11, albeit a judicial power. This is also the reason for the decision of the Chief Justice or his designate not being the decision of the Supreme Court or High Court, as the case may be, as there is no precedential value being the decision of the judicial authority, which is not a court of record.

39. In addition, as has been discussed aforesaid, the scheme of the 1996 Act is different and the process of mechanism for alternate dispute resolution system has to be construed not identical to the 1940 Act, considering the difference in their schemes.

40. I am thus of the view that non-registration of the petitioner firm would not be a bar under Section 69 of the Partnership Act for institution of proceedings under Section 11 of the 1996 Act.”



11. In view of the above legal position, the objection of the respondent based upon Section 69 of the Act of 1932 cannot be sustained and is hereby rejected.”

17. In *M/s Jayamurugan Granite Exports* (supra) the Court has observed that “I am thus of the view that non-registration of the petitioner firm would not be a bar under Section 69 of the Partnership Act for the institution of the proceedings under Section 11 of the 1996 Act.”

18. It is also pertinent to note that the scope of the present proceedings is confined to ascertaining whether there exists an Arbitration Agreement between the parties, or not. In terms of the judgment of the Supreme Court in *In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*, 2023 SCC OnLine SC 1666, the scope of the examination is confined to ascertaining the existence in the formal sense. The relevant portion of the said judgment is reproduced as under:-

“165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term “examination” in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of “existence” of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In *Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764]*, this Court held that the Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. **Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing.** This interpretation also gives true effect to the doctrine of competence-competence by



leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] in the context of Section 8 and Section 11 of the Arbitration Act.”

(emphasis supplied)

19. Whether or not the disputes sought to be raised are arbitrable or not and/or whether there is lack of jurisdiction in the Arbitral Tribunal to adjudicate the same on account of the juristic status of the petitioner, would necessarily be considered by a duly constituted Arbitral Tribunal.

20. As such, for the purpose of these proceedings, this Court is unable to conclude that the petitioner is precluded from seeking constitution of an Arbitral Tribunal.

21. Accordingly, Mr. Rahul Malhotra, Advocate (Mob. No.: +91 9871133184) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

22. The respondent shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

23. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosures as required under Section 12 of the A&C Act.

24. The learned Sole Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

25. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator



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on their merits, in accordance with law.

26. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.

27. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

DECEMBER 20, 2024/uk, sv