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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 02.09.2026

CNR No. DLHC010616382025

+ ARB.P. 1322/2025

XERO DEGREES CAFE PVT LTD

.....Petitioner

Through: Mr. Abhay Mahajan, Mr. Ashit
Kapoor and Mr. Madhav Sonker,
Advs.

versus

D.K MEHTA AND SONS & ORS.

.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter 'A&C Act'), seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties arising out of and in connection with the Franchise Agreement dated 17.04.2021.
2. The petitioner is a private limited company engaged in the food and beverage business, which operates a chain of owned and franchised outlets under the brand 'Xero Degrees'. Respondent No. 1 is a partnership firm, of which Respondent Nos. 2 and 3 are stated to be the partners. Respondent No.4 is arrayed on the premise that the franchised outlet in question has been transferred to him by Respondent Nos.1 to 3.
3. By the Franchise Agreement dated 17.04.2021, executed between the petitioner and the Respondent No. 1, the petitioner granted to Respondent



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No.1, the right to operate one franchised outlet in the State of Punjab under the petitioner's brand, for a term of five years, against a non-refundable franchise fee of Rs.10,00,000/- along with 18% GST in terms of Clause 5.1, and a monthly royalty at the rate of 8% (inclusive of GST) of the net revenue of the outlet, as calculated from the POS at the outlet, in terms of Clause 5.2.

4. It is the case of the petitioner that Respondent Nos. 1 to 3, in breach of Clauses 8.6 and 13 of the said Agreement, transferred the franchise to Respondent No. 4 without its prior written consent, and withheld the books of account and operational information pertaining to the outlet; and that Respondent No. 4 has been operating the outlet, and a social media page, using the petitioner's brand name without authority. A sum of Rs.39,77,442.81/- is stated to be outstanding on account of royalty.

5. The arbitration agreement between the parties is contained in Clause 25.4 of the said Franchise Agreement dated 17.04.2021, which reads as under:

"25.4 Arbitration: Any and all disputes ("Disputes") arising out of or in relation to or in connection with this Agreement between the Parties or relating to the performance or non-performance of the rights and obligations set forth herein or the breach, termination, invalidity or interpretation thereof shall be referred for arbitration at Delhi, India in accordance with the terms of Indian Arbitration and Conciliation Act, 1996 or any amendments thereof. The place of arbitration shall be Delhi. The language used in the arbitral proceedings shall be English. Arbitration shall be conducted by a sole arbitrator, who shall be appointed by the Franchisor. The arbitral award shall be in writing and shall be final and binding on each party and shall be enforceable in any court of competent jurisdiction."

6. The petitioner issued a notice dated 07.05.2025 to respondent nos.1 and 4. Through the notice, the petitioners terminated the Franchise Agreement, invoked arbitration in terms of Clause 25.4 against respondents no.1, and proposed a panel of three names for appointment of one of them as Sole



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Arbitrator. The said notice evoked no response, nor did the respondents propose any name of their own. The present petition came to be filed thereafter.

7. Notice in the present petition was issued on 27.08.2025. Vide order dated 15.04.2026, the learned Joint Registrar (Judicial), upon noticing that Respondent Nos. 1 to 4 stood served by e-mail through the Registry, and that there was a refusal on the part of the respondents to accept service by speed post, deemed all the respondents to be served, and granted them four weeks' time to file their reply. As recorded in the order dated 07.08.2026, no reply has been filed.

8. Section 3 of the A&C Act contemplates that a written communication is deemed to have been received if it is sent to the addressee's last known place of business or mailing address by any means which provides a record of the attempt to deliver it. In the present case, the respondents having been served by e-mail through the Registry, and there being a refusal on their part to accept service by speed post, due steps have been taken to effect service upon the respondents, and the onus in that behalf stands discharged. The respondents are, accordingly, deemed to have been duly served, and the present petition is taken up for hearing and disposal, despite there being no appearance on behalf of the respondents.

9. Clause 25.4 stipulates the place of arbitration to be Delhi, and Clause 25.3 confers exclusive jurisdiction upon the courts at Delhi. The registered office of the petitioner is also situated at New Delhi. This Court is, accordingly, possessed of the requisite jurisdiction to entertain the present petition.

10. The existence of the arbitration agreement is not in dispute. Clause 25.4



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constitutes an arbitration agreement in writing, satisfying the requirements of Section 7 of the A&C Act, and the disputes sought to be raised, arising as they do out of the alleged breach and the consequent termination of the Franchise Agreement dated 17.04.2021, are prima facie covered thereby. The notice under Section 21 of the A&C Act having evoked no response, and no consensus having been arrived at as regards the appointment of a Sole Arbitrator, the jurisdiction of this Court under Section 11 of the A&C Act stands attracted.

11. The disputes arising out of the Franchise Agreement dated 17.04.2021 between the Petitioners and Respondent Nos. 1-3 are, accordingly liable to be referred to arbitration and a Sole Arbitrator is required to be appointed.

12. Respondent No.4 is admittedly not a signatory to the Franchise Agreement dated 17.04.2021. He is arrayed on the premise that the franchised outlet came to be transferred to him by Respondent Nos. 1 to 3. The petitioner asserts that the transfer is unauthorized and in breach of the said Agreement. Substantive reliefs are, nonetheless, claimed against Respondent No. 4 in the intended arbitration, including a sum of Rs.30,00,000/- on account of passing off, and rendition of accounts.

13. Two things are to be noted in this regard. The first is that the notice dated 07.05.2025, though addressed to both Respondent No. 1 and Respondent No.4, invokes the arbitration clause only *qua* Noticee No. 1, which is respondent No. 1 to the present case. The second is that Respondent No. 4, not being a signatory, would be bound by the arbitration agreement only upon his being shown to be a veritable party thereto within the meaning of Section 2(1)(h) read with Section 7 of the A&C Act.

14. As regards the proposed impleadment of respondent no.4, it is useful to



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refer to the judgment of the Supreme Court in **Cox and Kings Ltd. v. SAP India Pvt. Ltd.**, (2024) 4 SCC 1. In that case, the Constitution Bench of the Supreme Court held the referral court is only required to take a *prima facie* view as to the existence of an arbitration agreement and the determination of whether a non-signatory is a veritable party must be left to the Arbitral Tribunal. The Court observed as follows:

“168. In Deutsche Post Bank Home Finance Ltd. v. Taduri Sridhar, a two-Judge Bench of this Court held that when a third party is impleaded in a petition under Section 11(6) of the Arbitration Act, the referral court should delete or exclude such third party from the array of parties before referring the matter to the Tribunal. This observation was made prior to the decision of this Court in Chloro Controls and is no longer relevant in light of the current position of law. Thus, when a non-signatory person or entity is arrayed as a party at Section 8 or Section 11 stage, the referral court should prima facie determine the validity or existence of the arbitration agreement, as the case may be, and leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the arbitration agreement.”

“169. In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge: first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. ...”

15. Reference in this regard may also be made to the judgment of the Hon’ble Supreme Court in **ASF Buildtech (P) Ltd. v. Shapoorji Pallonji & Co. (P) Ltd.**, (2025) 9 SCC 76, wherein the Court has observed as follows:-

“110. Even if it is assumed for a moment that the Referral Court in its jurisdiction under Section 11 of the 1996 Act has the discretion to determine whether a non-signatory is a veritable party to the arbitration agreement or not, by virtue of Cox & Kings (1) [Cox & Kings Ltd. v. SAP (India) (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 :



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(2024) 251 Comp Cas 680] , the Referral Court should only refrain but rather loathe the exercise of such discretion. Any discretion which is conferred upon any authority, be it Referral Courts must be exercised reasonably and in a fair manner. Fairness in this context does not just extend to a non-signatory's rights and its apprehension of prejudice, fairness also demands that the arbitration proceedings is given due time to gestate so that the entire dispute is holistically decided. Any determination even if prima facie by a Referral Court on such aspects would entail an inherent risk of frustrating the very purpose of resolution of dispute, if the Referral Courts opine that a non-signatory in question is not a veritable party. On the other hand, the apprehensions of prejudice can be properly mitigated by leaving such question for the Arbitral Tribunal to decide, as such party can always take recourse to Section 16 of the 1996 Act and thereafter in appeal under Section 37, and where it is found that such party was put through the rigmarole of arbitration proceedings vexatiously, both the Tribunal and the courts, as the case may be, should not only require that all costs of arbitration insofar as such non-signatory is concerned be borne by the party who vexatiously impleaded it, but the Arbitral Tribunal would be well within its powers to also impose costs."

16. It has further been held in **Adavya Projects Pvt. Ltd. v. Vishal Structurals Pvt. Ltd.**, (2025) 9 SCC 686, that the non-issuance of a notice under Section 21 of the A&C Act to a particular person or the omission of the referral court to refer such a person does not denude the Arbitral Tribunal of its jurisdiction to implead such person/s. The Court observed as under -

"31. Therefore, the determination of whether certain persons are parties to the arbitration agreement, and consequently, whether they can be made party to the arbitration proceedings, is left to the Arbitral Tribunal. While the Section 11 court can return a prima facie finding on this issue, the same does not bind the Arbitral Tribunal, which must decide the issue based on evidence and the applicable legal principles. The determination of this issue goes to the very root of the Arbitral Tribunal's jurisdiction, and hence, is covered under Section 16 ACA.

32. It is also relevant to take note of this Court's decision in *Praveen Enterprises* , wherein it held that when a court appoints the Arbitral Tribunal under Section 11, the Arbitral Tribunal's terms of reference are not restricted to specific disputes referred by the court, unless the arbitration agreement itself requires the court to formulate and refer disputes to arbitration.



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33. Considering the purpose of a Section 11 application for constitution of an Arbitral Tribunal and the limited scope of examination into the existence of the arbitration agreement and prima facie finding on who are parties to it, it follows that the court under Section 11 does not conclusively determine or rule on who can be made party to the arbitral proceedings. Therefore, merely because Respondents 2 and 3 were not parties before the High Court under Section 11, and disputes against them were not referred to the arbitrator by order dated 24-11-2021, it does not mean that they cannot be impleaded at a later stage on this ground alone.

Source of the Arbitral Tribunal's jurisdiction and relevant inquiry under Section 16

34. At this stage, it is clear that not being served with a Section 21 notice and not being made a party in the Section 11 application are not sufficient grounds to hold that a person cannot be made party to arbitral proceedings....”

17. In **Pravin Electricals Pvt. Ltd. v. Galaxy Infra & Engg. Pvt. Ltd.**, (2021) 5 SCC 671 wherein the Supreme Court has observed as under:-

“30. For all these reasons, we set aside the impugned judgment of the Delhi High Court insofar as it conclusively finds that there is an arbitration agreement between the parties. However, we uphold the ultimate order appointing Justice G.S. Sistani, a retired Delhi High Court Judge as a sole arbitrator. The learned Judge will first determine as a preliminary issue as to whether an arbitration agreement exists between the parties, and go on to decide the merits of the case only if it is first found that such an agreement exists. It is clarified that all issues will be decided without being influenced by the observations made by this Court which are only prima facie in nature. The appeal is allowed in the aforesaid terms.”

18. Thus, (i) in terms of **Cox & Kings** (Supra) and **ASF Buildtech (P) Ltd.** (Supra), the issue as to whether a non-signatory is a veritable party to an arbitration agreement, can be left to be considered by the Arbitral Tribunal, especially if the same involves an intricate factual exercise; (ii) in terms of **Pravin Electricals Pvt. Ltd.** (supra) where the *prima facie* exercise for determining existence of an arbitration agreement, is itself inconclusive, the same can also be left to be considered by the Arbitral Tribunal.



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19. In the present case, there undoubtedly exists an arbitration agreement between the petitioner and respondent nos. 1 to 3. However, at this stage, this Court is unable to conclusively determine whether respondent no.4 is a veritable party to the arbitration agreement contained in Clause 25.4. Such a determination necessarily entails appreciation of intricate factual aspects, possibly requiring evidence. In terms of the judgment of the Supreme Court in **Cox and Kings Ltd.** (supra), **ASF Buildtech (P) Ltd.** (Supra) and **Pravin Electricals Pvt. Ltd.** (supra) such a determination is required to be made by the Arbitral Tribunal.

20. In the circumstances, there is no impediment to constituting an Arbitral Tribunal to adjudicate the disputes between the parties. The issue as to whether respondent no.4 can be joined in the arbitration shall be determined by the learned Sole Arbitrator in accordance with law.

21. Accordingly, Ms. Sukhbeer Kour Bajwa, Advocate (Mobile No + 91 9818040158) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

22. The respondents shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the learned Sole Arbitrator in accordance with law.

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

24. Let arbitration take place under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC).

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



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

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

27. A copy of this order be sent to the DIAC for information and necessary action.

SACHIN DATTA, J

SEPTEMBER 2, 2026/nb