



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE ASHOK S.KINAGI

CIVIL MISC. PETITION NO. 360 OF 2023

BETWEEN:

M/S N R GREENWOOD CONSTRUCTION PRIVATE
LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956 AND
HAVING THEIR REGISTERED OFFICE AT NO. 396,
3RD FLOOR, 1ST MAIN, KMH BLOCK,
JUDGES COLONY, GANGANAGAR,
BANGALORE - 560032
REPRESENTED BY ITS MANAGING DIRECTOR
MR. SRIDHAR CHILUKURI.

...PETITIONER

(BY SRI. PURUSHOTHAMAN K N., ADVOCATE)

AND:

M/S INDIA BUILD REALTY PRIVATE LIMITED
REGISTERED OFFICE AT 2ND FLOOR,
NO. 6/A, KABRA EXCELSIOR, 7TH CROSS,
1ST BLOCK, KORAMANGALA,
BANGALORE - 560 034.

...RESPONDENT

(BY SRI. MAHESH B J., ADVOCATE)

THIS CIVIL MISC. PETITION IS FILED UNDER SEC.11(6)
OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING
TO (A) APPOINT AN ARBITRATOR FOR RESOLVING THE
DISPUTES BETWEEN THE PETITIONER AND THE RESPONDENT
THAT HAVE ARISEN UNDER THE ARTICLES OF AGREEMENT





DATED 18/11/2016 PLACED AT ANNEXURE-B. (B) PASS SUCH OTHER ORDER OR ORDERS AS THIS HON'BLE COURT DEEMS FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE ASHOK S.KINAGI

ORAL ORDER

1. This Civil Miscellaneous petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, "***the Act***"), seeking for the appointment of an arbitrator to resolve the disputes between the parties to the petition in terms of Clause (E.57) of the Articles of Agreement dated 18.11.2016 vide Annexure "B".
2. Brief facts leading to the filing of this petition are as follows:
3. The petitioner specialises in the real estate development, amongst other objectives set up in its Memorandum of Association. The respondent—Company is the developer of the real estate projects. The petitioner and the respondent entered into an



Articles of Agreement dated 18.11.2016 vide Annexure "B".

4. It is the case of the petitioner that the petitioner performed its obligations under the Articles of Agreement dated 18.11.2016 and there was a delay in payment of the invoice value and Clause 12 of Section (C) of the Articles of Agreement has not been adhered to by the respondent, as a result of which, the petitioner underwent and is undergoing substantial loss.
5. The respondent demanded a credit note, despite there being no such term in the Articles of Agreement. The petitioner, despite having no inclination to issue the same, was forced upon to issue the same, fearing no payments receivable.
6. The respondent has not made payments as per the running bills issued by the petitioner. The petitioner issued a Legal Notice on 14.03.2023, demanding



payments due from the respondent. The Articles of Agreement provide for an arbitration clause to settle disputes between the parties and the petitioner, as per Clause (E.57) of Articles of Agreement propose the name of the Hon'ble Sri. Justice K.Sreedhar Rao, former Acting Chief Justice of the High Court of Guwahati, as an Arbitrator on its behalf and requested the respondent to nominate an arbitrator on their behalf to settle the disputes.

7. The respondent replied to the legal notice, however, there was no consensus between the parties to the petition with regard to the appointment of an arbitrator. Hence this petition.
8. The respondent, despite the grant of sufficient opportunity, did not file a statement of objections. Hence the statement of objections is taken as not filed.



9. Heard the arguments of the learned counsel for the petitioner and the learned counsel for the respondent.
10. The learned counsel for the petitioner submitted that the Articles of Agreement came to be executed between the petitioner and the respondent on 18.11.2016. The petitioner has performed its obligation under the Articles of Agreement. He submits that the respondent has not performed its obligation as per the Articles of Agreement dated 18.11.2016.
11. The dispute arose between the petitioner and the respondent regarding the terms and conditions of the Articles of Agreement. The Articles of Agreement provide for an arbitration clause. The petitioner issued an arbitration notice, nominating Hon'ble Sri.Justice K.Sreedhar Rao, former Acting Chief Justice of the High Court of Guwahati, as an



Arbitrator and called upon the respondent to nominate the Arbitrator on their side. But there was no consensus between the parties. Since there is an arbitrable dispute and the same has to be resolved by an arbitrator, Hence, he prays to allow the petition.

12. *Per contra*, learned of counsel for the respondent submits no objection to allow the petition.
13. Perused the records and considered the submissions made by the learned counsel for the parties.
14. The point that arises for consideration in this petition is:

"Whether the petitioner has made out a ground to refer the matter to the Arbitrator to resolve the disputes between the parties to the petition in terms of Clause (E.57) of the Articles of Agreement dated 18.11.2016 vide Annexure "B" as



***per the provisions of the Arbitration
and Conciliation Act and the Rules?”***

15. There is no dispute regarding the execution of the Articles of Agreement dated 18.11.2016. The petitioner claims that he has complied with his part of the obligations under the Articles of Agreement. The respondent did not clear the outstanding dues, which are necessary to complete the work. The petitioner issued a legal notice on 14.03.2023 demanding payment due from the respondent and requested to appoint an Arbitrator. Despite service of a legal notice, the respondent neither made any payment to the petitioner nor nominated an Arbitrator on their behalf.
16. The Articles of Agreement dated 18.11.2016 provide for an arbitration Clause (E.57), which reads as follows:



"E.57 ARBITRATION:

All disputes and differences arising out or in connection with Contract whether during the progress of work or after completion shall be referred to and settled by arbitration by two Arbitrators, one to be nominated by the Contractor and one to be nominated by the Client. The two arbitrators shall in turn appoint a neutral third party who shall also be an arbitrator. The decision of the Umpire shall, however, be final and binding on both the parties. For the purpose of this clause, the provisions of the Arbitration and Conciliation Act, 1996, with the relevant amendments and latest revisions shall be applicable. The seat of arbitration shall be Bangalore and the arbitration shall be carried out in the English language. The disputes, if any, between the parties, shall be subject to the exclusive jurisdiction of the courts, in the Bangalore alone."



17. On perusal of Clause (E.57) of the Articles of Agreement dated 18.11.2016, it is clear that all the disputes and differences arising out of or in connection with the contract shall be referred to and settled through arbitration by two arbitrators—one to be nominated by the contractor and another to be nominated by the client. The two arbitrators shall, in turn, appoint a neutral third party who shall be an arbitrator.
18. The dispute arose between the parties to the petition in connection with the contract and the same is required to be resolved by an arbitrator, one to be nominated by the petitioner and one to be nominated by the respondent.
19. As there is an arbitrable dispute between the petitioner and the respondent, the same has to be resolved through Arbitrators in terms of Clause



(E.57) of the Articles of Agreement dated 18.11.2016.

20. Thus, in view of the above discussion, the petitioner has made out a ground to refer the disputes to the Arbitrators in terms of Clause (E.57) of the Articles of Agreement. Accordingly, I answer the point for consideration in the affirmative and proceed to pass the following order :

ORDER

- (I) This Civil Miscellaneous Petition is allowed.
- (II) Hon'ble Mr.Justice K. Sreedhar Rao, former Chief Justice of the Guwahati High Court, and Hon'ble Mr.Justice Rajendra M. Badamkar, former Judge of the High Court of Karnataka are nominated as Arbitrators, who in turn shall appoint a neutral third Arbitrator, to resolve the disputes between the parties to the petition in terms of Clause (E.57) of the Articles



of Agreement dated 18.11.2016, as per the provisions of the Arbitration and Conciliation Act and the Rules.

(III) The office is directed to communicate this order to the learned Arbitrators and the Arbitration and Conciliation Centre, Bengaluru.

(IV) The office is directed to return the original documents, if any, to the petitioner after retaining a photocopy of the same.

(V) In view of the disposal of the petition, pending interlocutory applications, if any, stand disposed of.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

RK
Ct:KVH
List No.: 1 Sl No.: 17