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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 1022/2022**
VIKRAM RANA Petitioner
Through: Mr. Amit Jain, Mr. Sumit Rana & Mr. Arun Dalal, Advs.

versus

SURYA MAINTENANCE AGENCY PVT LTD & ORS. Respondents
Through: Mr. Badal Dayal, Adv. for R-1.
Mr. Shafiq Khan & Ms. Anjani Suri,
Advs. for R-3.

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+ **ARB.P. 1023/2022**
VIKRAM RANA Petitioner
Through: Mr. Amit Jain, Mr. Sumit Rana & Mr. Arun Dalal, Advs.

versus

SURYA MAINTENANCE AGENCY PVT LTD & ORS. Respondents
Through: Mr. Badal Dayal, Adv. for R-1.
Mr. Shafiq Khan & Ms. Anjani Suri,
Advs. for R-3.

91

+ **ARB.P. 1024/2022**
ORIENTAL CRAFTS MANUFACTURING PVT LTD.....Petitioner
Through: Mr. Amit Jain, Mr. Sumit Rana & Mr. Arun Dalal, Advs.

versus

SURYA MAINTENANCE AGENCY PVT LTD & ORS. Respondents
Through: Mr. Badal Dayal, Adv. for R-1.
Mr. Shafiq Khan & Ms. Anjani Suri,



Advvs. for R-3.

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ARB.P. 1025/2022

VANDANA TAPARIA

.....Petitioner

Through: Mr. Amit Jain, Mr. Sumit Rana & Mr.
Arun Dalal, Advvs.

versus

SURYA MAINTENANCE AGENCY PVT LTD & ORS.

.....Respondents

Through: Mr. Badal Dayal, Adv. for R-1.
Mr. Shafiq Khan & Ms. Anjani Suri,
Advvs. for R-3.

93

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ARB.P. 1026/2022

MANISH TAPARIA

.....Petitioner

Through:

versus

SURYA MAINTENANCE AGENCY PVT LTD AND ORS.

.....Respondents

Through: Mr. Badal Dayal, Adv. for R-1.
Mr. Shafiq Khan & Ms. Anjani Suri,
Advvs. for R-3.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

24.03.2025

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1. These are petitions filed under section 11 of Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrators to adjudicate the disputes between the parties.
2. The petitioners are owners of the following commercial units :

Serial	Name of petitioners	Owner of Commercial Units
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No.		
1	MR. VIKRAM RANA	(1) Property bearing Unit No. 105-B,admeasuring 650Sq. Ft. Covered Area on First Floor, in the building knownas NDM-I on Plot bearing No. B- 2, 3 & 4 situated at Wazirpur District Centre, Netaji Subhash Place, New Delhi-110034. (2) Property bearing Unit No. 105-A,admeasuring 876Sq. Ft. Covered Area on First Floor, in the building knownas NDM-I on Plot bearing No. B- 2, 3 & 4 situated at Wazirpur District Centre, Netaji Subhash Place, New Delhi-110034.
2	M/S ORIENTAL CRAFTSMANUFACTURING CO. PVT. LTD.	Unit No. 304, Third Floor, Plot No. D-1, 2&3 situated at Wazirpur District Centre, Netaji Subash Place, Delhi -110034.
3	MRS. VANDANA TAPARIA	Unit No. 506, admeasuring 496 Sq. Ft. Covered Area on Fifth Floor, in the building known as NDM-1 on Plot bearing No.2, 3&4 situated at Wazirpur District Centre, Netaji Subhash Place, New Delhi-11 0034.
4	MANISH TAPARIA	Unit No. 505, admeasuring 616 Sq. Ft. CoveredArea on Fifth Floor, in the building known as NDM-1 on Plot bearing No. 2, 3 & 4 situated at Wazirpur District Centre, Netaji Subhash Place, New Delhi-110034.



3. The respondent No.3 is the builder/ developer in the building known as 'NDM-1' situated at Plot No.B-2, 3 and 4, Netaji Subhash Place, New Delhi-110034.
4. The respondent No.1 has been appointed by the developer as the maintenance agency of the building for the following:-
 - (i) Operation & Maintenance of air-conditioning system and plants, Fire - Fighting systems, lifts, other electrical & mechanical equipment systems as installed by the promoter/developer of the said building,
 - (ii) maintenance of common areas including basement, common areas, terraces, refuge areas etc.,
 - (iii) operation and maintenance of electric substation, pumps, transformer, D.G. Sets, Water Tanks,
 - (iv) maintenance of compound wall, facade, landscaping, electrification, water supply, sewerage, roads, paths and otherservices within the said building,
 - (v) security services for the building,
 - (vi) insurance of the common plants & equipments in the building,
 - (vii) responsibility of annual maintenance contract for electric sub-station, pumps, fire detection and fire fighting equipments, transformers, DG Sets, HVAC, escalators, elevators, service lifts etc.
 - (viii) insurance of electric substation, pumps, fire detection and fire-fighting equipments, transformers, DG Sets, HVAC, escalators, elavators, service lifts, air conditioning plant room / chillers, etc.



- (ix) disposal of waste and garbage from garbage room.
5. The respondent No. 2 is a company which has been appointed by respondent No. 1 to function as 'property manager' for the aforesaid building to maintain common areas of the building and operate various facilities and to provide services to the occupants in terms of Article 4 of the Maintenance Agreements. The respondent No. 1 and 2 are collectively referred to as 'maintenance agencies'.
6. The disputes between the petitioner and the respondents are stated to be as under:-
- i. Determination of super area attributable to the petitioner for the purposes of calculation of maintenance charges on the date of its appointment of maintenance agency as well as on the date of the present petition.
 - ii. Determination of rate at which the maintenance charges are leviable by the respondents in proportion to the super area available;
 - iii. Gross illegality on part of the respondents in providing and attributing electricity connection load to the petitioner's unit and consequently charging excess money from the petitioner qua fixed charges, unit charges etc.; and
 - iv. Reduction of proportionate land rights in wake of common areas being encroached, constructed and sold off by respondents in connivance, in violation of sanctioned building plan.
7. The Maintenance Agreement executed between the petitioners and the respondents Nos. 1 and 2 contain arbitration clause as Clause 20 which reads as under:-



“ARTICLE 20

ARBITRATION

20.1 All disputes, difference or disagreement arising out of, in connection with or in relation to this Agreement shall be mutually discussed and settled between the Parties.

20.2 All disputes, difference or disagreement arising out of, in connection with or in relation to this Agreement, which cannot be amicably settled, shall be finally decided by arbitration to be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996. Any arbitration pursuant hereunder shall be a domestic arbitration under the applicable law.

20.3 The venue of arbitration shall be Delhi and the language of arbitration shall be English.

20.4 That all the disputes differences between the parties or in respect of any matter with regard to rights, dues and liabilities of any of the parties, shall be settled by reference to Arbitration to a sole Arbitrator to be appointed by the Company as per provision of Arbitration and Conciliation Act, 1996, together with any statutory proceeding shall be held and conducted at Delhi.”

8. Since there were disputes between the parties, the petitioner invoked arbitration clause *vide* notice under Section 21 dated 29.06.2022. Hence the present petition.
9. The only argument raised by Mr. Khan, learned counsel for respondent No.3 is that the respondent No.3 is not signatory to the Agreements in question and hence, the respondent No. 3 cannot be made a party to the arbitration proceedings.
10. He further states that there is an Agreement for services between the developer i.e. respondent No.3 and respondent No.1, which is on principle-to-principle-basis and respondent No. 3 has no control over



respondent No. 1.

11. In identical circumstances, this Court in Arbitration Petition bearing No.1296/2022, 1297/2022 and 1324/2022 has already adjudicated the Agreement in question in these proceedings and the same objections too. The operative part of the judgment reads as under:-

“20. A perusal of the agreement dated 30.06.2008 between the respondent no.3 (developer) and the maintenance agency leaves no manner of doubt that the maintenance agency performs its functions only in terms of the authorisation granted by respondent no.3 to respondent no.1 under the said agreement.....

21. It is evident from the aforesaid stipulations that:

(i) The respondent no.3 (developer) has "awarded all rights to the maintenance agency for maintaining the buildings in question, either itself or through any other agency".

(ii) The respondent no.3 has the power to conduct an audit to ensure proper performance of duties by the maintenance agency; upon this option being exercised, the maintenance agency would make available to the respondent no.3 (developer) the services of its Property and Facilities Management Services Division as may be required (Clause 3.4 of the agreement).

(iii) Maintenance agency has been authorized to fix and collect the common area maintenance charges subject however, to the limitation that the profits of the maintenance agency shall not exceed 20% in any financial year.



(iv) Importantly, the respondent no.3 has entrusted respondent no.1 with a duty to deal fairly, impartially and courteously with all complaints and inquiries, complaints made by individual occupiers, builder/promoter and its customers (Clause 4.8 of the agreement)

(v) There is a revenue sharing which is envisaged between the developer and the maintenance agency in respect of proceeds arising as a result of leases of earmarked signages on the facade of the complex/building and in respect of receipts from parking areas.

(vi) The developer has power to terminate the services of the maintenance agency including inter alia in the event of negligence in providing the service as enunciated in the agreement.

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26. In the present case, the impleadment of the respondent no.3 in the arbitration proceedings is mandated not on account of "group of companies doctrine" but on account of the fact that the authority of respondent no.1 to act as maintenance agency is directly derived from the respondent no.3 (developer) in terms of their inter se agreement dated 30.06.2008; and the said agreement is inextricably linked to the maintenance agreements to which the petitioner no.1 is the party. The agreements in question have to be read with each other to derive the respective rights and obligations of the parties.

28. In the present case, (i) the respondent no.3 (developer) is



deriving direct benefit (as noticed aforesaid) from the contract with the maintenance agency (respondent no.1); (ii) the maintenance agreements dated 01.11.2015 and 03.12.2010 between the maintenance agency and the owners of the built up unit/flats are inextricably connected with agreement for services dated 30.6.2008 between the maintenance agency and the developer. As such, both the „direct benefits“ estoppel theory and the „intertwined estoppel theory“ are applicable in the present case.

30. It is also relevant that at the stage of considering the petition under Section 11 of the A&C Act, this court is only to arrive at a prima facie finding with regard to impleadment of the respondent no.3 (developer) in the proposed arbitration proceedings, in the light of the inter-linked agreements as referred to aforesaid. The petitioners have made a prima facie case of impleadment of respondent no.3 in the proposed arbitration proceedings based on the control exercised by respondent no.3 (developer) in the activities of maintenance agency (respondent no.1) by virtue of the inter se agreement between them. Whether or not, there has been any lapse/shortcoming on the part of the respondent no.1 in providing the requisite services, is one of the primary issues in the proposed arbitration. The agreement between the developer and the maintenance agency obliges the maintenance agency to maintain a particular standard of maintenance and to deal with the complaints of occupiers/flat owners. Under the said



agreement, it is also incumbent on the developer to terminate the services of the maintenance agency in the event of any incompetence/negligence in providing services. Moreover, there is a revenue sharing arrangement between the maintenance agency and the developer; the developer also has the right to conduct an audit in respect of the maintenance activities of respondent no.1 in respect of the buildings in question. The agreement between the maintenance agency and the developer caps the profit entitlement of the maintenance agency to 20%. In the light of these stipulations, the issue as to whether the common area maintenance charges being charged by the maintenance agency are excessive or not, cannot be decided in the absence of the developer.

37. In the circumstances, the petitioners have made out a prima facie case for referring the parties to arbitration and for appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

39. Needless to say, impleadment of the respondent no.3 in the arbitration proceedings would be subject to a further detailed examination by the Arbitral Tribunal based on submissions of the parties and the material placed before the Arbitral Tribunal. As held by the Supreme Court in the case of *Vijay Drolia (supra)*, “jurisdictional issues concerning whether certain parties are bound by a particular arbitration, under group-company doctrine or good faith, etc., in a multi-party arbitration raises complicated factual questions, which are best



left for the tribunal to handle”.

Emphasis added

12.The arguments of Mr. Khan, learned counsel have also specifically been dealt with in para 30 italicised above. The aforesaid judgment was challenged by the respondent No. 3 before the Hon’ble Supreme Court of India and SLP has been dismissed *vide* Order dated 20.11.2024. Hence, the arguments of Mr. Khan have already been heard, dealt with and rejected by a Co-ordinate Bench.

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

xviii) Mr. Siddharth S. Yadav, Adv. (Mobile No. 7838888886) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

xix) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the ‘DIAC’).

xx) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018. Each petition shall be treated as a separate reference.

xxi) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

xxii) 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, 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.

xxiii) The parties shall approach the learned Arbitrator within two weeks from today.

14. The present petition is disposed of in the aforesaid terms.

JASMEET SINGH, J

MARCH 24, 2025/pk

Click here to check corrigendum, if any