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Arb.O.P.(Com. Div.) No.233 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.233 of 2025

SNP Infrastructure LLP
No.680, FNO-203, Regency House,
Durga Nagar Colony,
Hyderabad - 500 082.

... Petitioner

Vs.

1. Embassy Property Developments
Pvt. Ltd.,
1st Floor, Embassy Point # 150, Infantry Road,
Bangalore - 560 001.

2. ESNP Property Builders and
Developers Pvt. Ltd.,
1st Floor, Embassy Point # 150, Infantry Road,
Bangalore - 560 001.

Also at: 12th Floor, Pinnacle Tower, Embassy One,
8, Bellary Road, Ganganagar,
Bangalore - 560 032.

... Respondents

PRAYER: Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint a panel of two arbitrators on behalf of the parties, to enable the constitution of the arbitral Tribunal and to adjudicate the dispute between the petitioner and the respondents arising out of the Co-



Development Agreement dated 20.05.2016 (CDA) and the amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA).

For Petitioner : Mr. S. Arjun Suresh

For Respondents : Ms. Vaishnavi subramaniam
for M/s.Khaitan and Co. for R1

Mr. P.V. Balasubramaniam
Senior Counsel
assisted by Shruti Sabharwal
Rahul Kanna
Kshipra Pyare
Sanskriti Sinha
for R2

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of a panel of arbitrators by this Court.

2. There seems to be a dispute between the petitioner and the respondents arising out of the Co-Development Agreement dated 20.05.2016 (CDA) and the amendment agreement to the Co-Development



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Agreement dated 06.04.2024 (Amended CDA). Both the agreements contain an arbitration clause. The existence of arbitration clause has not been disputed by the first respondent. The amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA), is the agreement through which the second respondent took over the project of constructing ten towers, in view of the non completion of the project by the first respondent under the Co-Development Agreement dated 20.05.2016 (CDA). The amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA) also contains an arbitration clause. The same is reproduced hereunder:

"3.15 Conciliation and Arbitration

3.15.1 Notwithstanding anything contained in Clause 21 of the CDA, all disputes arising between the Developer, the Co-Developer and EPDPL concerning/ relating any matter, question or issue under the CDA or any amendment thereof including this Amendment Agreement or its construction or effect or the rights, duties or liabilities of the Parties or the validity of any terms including any termination of the Agreement (the "Dispute") shall be firstly sought to be resolved by the Parties through conciliation efforts between: (i) Mr.



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Jitu Virwani, the Managing Director of EPDPL, for and on behalf of EPDPL, (ii) Mr. P.R. Gopala Raju, the Designated Partner of the Developer, for and on behalf of the Developer and (iii) the Chief Executive Officer of Embassy Office Parks Management Services Private Limited (the manager to the Embassy Office Parks REIT) (presently, Mr. Aravind Maiya), for and on behalf of the Co-Developer. Such conciliation shall be initiated by a written notice by one Party to the other ("Conciliation Notice"). If such reconciliation is not arrived at within 30 (thirty) days of the Conciliation Notice served on the other Party the Dispute shall finally be resolved by arbitration before a sole arbitrator mutually appointed by the Developer, EPDPL and the Co-Developer.

3.15.2 The arbitration shall be conducted before a sole arbitrator mutually appointed by the Parties. If the Parties fail to appoint a sole arbitrator then the Parties shall approach the High Court of Madras to appoint a panel of two arbitrators and the two arbitrators shall choose the presiding arbitrator.

3.15.3 The seat and venue of arbitrator shall be in Chennai and shall be conducted in accordance with



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rules of arbitration then in force of the Arbitration and Conciliation Act, 1996. The language of the arbitration shall be in English.

3.15.4. The Parties agree that the arbitration award shall be final and binding on the Parties. Judgment upon the arbitration award may be rendered in any Court of competent jurisdiction or application may be made to such Court for a judicial acceptance of the award and an order of enforcement, as the case may be."

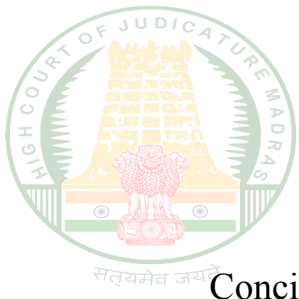
3. The first respondent in its counter has not disputed the existence of the arbitration agreement between the petitioner and the respondents. In fact, the first respondent had also nominated an arbitrator while sending the reply to the notice sent by the petitioner to comply with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996, wherein the petitioner had nominated its arbitrator. However, in the counter filed by the second respondent before this Court, they have denied their liability to the petitioner and they have questioned the arbitrability of the dispute as raised by the petitioner, since according to them, the petitioner has made only a prior amendment claim and not a post amendment claim. According to the



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second respondent, only if it is a post amendment claim, the arbitration clause contained in the amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA) is binding on the second respondent. According to the second respondent, being a pre-amendment claim that is prior to the date of the amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA), the dispute raised by the petitioner as against the second respondent is not an arbitrable dispute. In those circumstances, the second respondent seeks for dismissal of this petition. However, the first respondent would submit that this Court can appoint arbitrators as prayed for in this petition, who shall adjudicate the dispute between the parties.

4. Learned counsel for the petitioner drew the attention of this Court to a decision rendered by this Court, dated 26.02.2025, passed in Arb.O.P. (Com. Div.) No. 19 of 2025, in the case of *South Ganga Waters Technologies (P) Ltd. Vs. Vedanta Limited* and would submit that this Court, after giving due consideration to the various decisions rendered by the Honorable Supreme Court, has held as follows:



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a) The word examine found in Section 11 (6-A) of the Arbitration and Conciliation Act, 1996, has a very narrow scope and is limited to a requirement of a formal validity;

b) The use of the term 'examination' under Section 11 (6-A) is distinguishable from the use of the term 'rule' under Section 16, which implies that the scope of enquiry under Section 11 (6-A) is limited to a *prima facie* scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral Tribunal to rule under Section 16;

c) The *prima facie* view on existence of the arbitration agreement taken by the referral Court does not bind the Arbitral Tribunal or the Court enforcing the arbitral award;

d) The scope of judicial interference under Section 11 (6-A) of the Arbitration and Conciliation Act, 1996, is only confined to the limited scrutiny of "*prima facie* existence of the arbitration agreement, nothing more and nothing less" and the competence of the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, 1996 confers complete arbitral autonomy to rule, determine and act on the issues pertaining to impleadment or deletion of a party, signatory or non-signatory, arbitrability



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and non arbitrability, necessary or not necessary party, joinder or non-joinder to the arbitration in depth even if the ruling is contrary to that of the referral Court under Section 11 (6) of the Arbitration and Conciliation Act, 1996. Therefore, this Court had come to the above conclusion only after following the various decisions rendered by the Honorable Supreme Court, which includes the case of ***SBI General Insurance Co. Ltd. Vs. Krish Spinning [2024 (6) ALD 69]*** and ***Interplay between arbitration agreements under the Arbitration and Conciliation Act, 1996, and the Indian Stamp Act, 1899 [AIR 2024 SC 1]*** and various other decisions reflected in the said order. Therefore, the law is now well settled that while deciding a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the referral Court will have to look only into the *prima facie* existence of the arbitration clause and once the Court is satisfied that there exists an arbitration clause, necessarily the Court will have to refer the dispute to the arbitration.

5. In the case on hand, both in the Co-Development Agreement dated 20.05.2016 (CDA) and in the amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA) entered into between the



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petitioner and the respondents, there exists an arbitration clause. The second respondent has disputed the arbitrability of the dispute, as according to them, the petitioner's claim is a prior amendment claim, and only in case of post amendment claim, the second respondent is answerable. Apart from raising the issue of arbitrability, the second respondent has also raised the contention that if at all the petitioner is having any recourse they may proceed only against the first respondent and not against the second respondent.

6. The arbitration clause contained in the amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA) entered into between the petitioner and the respondents is reproduced here under:

"3.15 Conciliation and Arbitration

3.15.1 Notwithstanding anything contained in Clause 21 of the CDA, all disputes arising between the Developer, the Co-Developer and EPDPL concerning/ relating any matter, question or issue under the CDA or any amendment thereof including this Amendment Agreement or its construction or effect or the rights,



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duties or liabilities of the Parties or the validity of any terms including any termination of the Agreement (the "Dispute") shall be firstly sought to be resolved by the Parties through conciliation efforts between: (i) Mr. Jitu Virwani, the Managing Director of EPDPL, for and on behalf of EPDPL, (ii) Mr. P.R. Gopala Raju, the Designated Partner of the Developer, for and on behalf of the Developer and (iii) the Chief Executive Officer of Embassy Office Parks Management Services Private Limited (the manager to the Embassy Office Parks REIT) (presently, Mr. Aravind Maiya), for and on behalf of the Co-Developer. Such conciliation shall be initiated by a written notice by one Party to the other ("Conciliation Notice"). If such reconciliation is not arrived at within 30 (thirty) days of the Conciliation Notice served on the other Party the Dispute shall finally be resolved by arbitration before a sole arbitrator mutually appointed by the Developer, EPDPL and the Co-Developer.

3.15.2 The arbitration shall be conducted before a sole arbitrator mutually appointed by the Parties. If the Parties fail to appoint a sole arbitrator then the Parties shall approach the High Court of Madras to appoint a panel of two arbitrators and the two arbitrators shall



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choose the presiding arbitrator.

3.15.3 The seat and venue of arbitrator shall be in Chennai and shall be conducted in accordance with rules of arbitration then in force of the Arbitration and Conciliation Act, 1996. The language of the arbitration shall be in English.

3.15.4. The Parties agree that the arbitration award shall be final and binding on the Parties. Judgment upon the arbitration award may be rendered in any Court of competent jurisdiction or application may be made to such Court for a judicial acceptance of the award and an order of enforcement, as the case may be."

7. In this petition, in paragraph number 4.14 a plea has been taken by the petitioner, which is reproduced hereunder:

"4.14. At this juncture, it is pertinent to state that pursuant to the Amended CDA, the Respondents continued to delay the completion of the Project thereby further adding to the losses of the Petitioner. In specific, the works pertaining to the Project were not progressing (i.e., other seven blocks not completed.



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Further, the First Respondent had not settled the Petitioner's claims. Hence, the Petitioner vide letter dated 05/12/2024, inter alia, called upon the First and Second Respondent to attend a conciliation meeting and reiterated the claims made vide the Demand Letter issued to the First Respondent, and further also called upon the Second Respondent to pay the claims raised by the Petitioner. In response to the aforesaid letter, the First and Second Respondents issued replies, both dated 18/12/2024, whereby both the Respondents, inter alia, denied any liability for the delay in the completion of the works in the Project."

8. As seen from the above plea taken by the petitioner in this petition, it cannot be conclusively established that the petitioner does not have any claim against the second respondent and further, it cannot be established that the claims made by the petitioner is only a prior amendment claim and does not include a post amendment claim. This Court is not expressing any opinion on the petitioner's contentions as pleaded in paragraph number 4.14 of this petition. It is for the arbitrator to decide the same on merits and in accordance with law. However, on a *prima facie* consideration of paragraph number 4.14 of this petition, the petitioner seems to have a claim against the



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second respondent as well. Even during the course of his submissions made by the learned counsel for the petitioner, he reiterated that the petitioner's claim includes post amendment claim as well. However, the contention of the learned counsel for the petitioner is rejected by the learned senior counsel appearing for the second respondent, who would reiterate the contents of the counter filed by the second respondent by stating that the claim of the petitioner is only a prior amendment claim and not a post amendment claim.

9. This Court, while deciding a petition under Section 11 of the Arbitration and Conciliation Act, 1996 has a limited scrutiny. It cannot make a roving inquiry with regard to the respective contentions of the respective parties. When there exists an arbitration clause in the amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA) to which both the respondents are parties and the said arbitration clause also makes it clear that all disputes arising between the developer (petitioner) and the co-developer (second respondent) and EPDPL (first respondent) concerning / relating any matter, question or issue under the co-development agreement or any amendment thereof including the



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amendment agreement of its construction or effect or the rights, duties or liabilities of the parties or the validity of any terms including any termination of the agreement is arbitrable, necessarily this Court cannot shut its eyes to the said clause by accepting the contentions of the second respondent. When on a *prima facie* consideration, this Court finds the existence of an arbitration clause between the petitioner and the respondents and the said arbitration clause permits any of the parties to raise any dispute, which involves prior amendment claims as well as post amendment claims.

10. In the case on hand, the petitioner had sent a notice to the respondents to comply with the requirements of Section 21 of the Arbitration and Conciliation Act, 1996, by nominating a sole arbitrator and has requested the respondents to give their concurrence for his name to be appointed as the sole arbitrator. A reply has also been sent by the first respondent, agreeing that there is an arbitration clause with regard to the subject matter of dispute. But, they have chosen to nominate their own arbitrator and they have requested the petitioner to accept their nominee instead of the arbitrator nominated by the petitioner. The second respondent has also sent a reply, reiterating the very same contentions that have been



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raised in their counter in this petition, namely, that they are not liable for the claim made by the petitioner as it is not a post amendment claim and they have also questioned the arbitrability of the dispute.

11. Even prior to the compliance of Section 21 of the Arbitration and Conciliation Act, 1996, the petitioner had sent a notice to the respondents, requesting them to accept for conciliation as per the procedure mentioned in clause 3.15 of the amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA). Both the respondents have sent a reply to the same. Despite, the exchange of communication between the petitioner and the respondents with regard to the conciliation, the conciliation did not fructify.

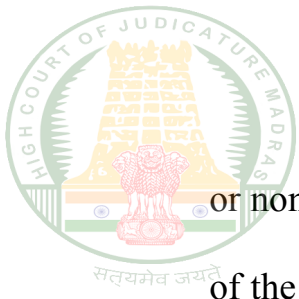
12. In view of the well-settled law, which has been reiterated supra by this Court, and since the arbitration clause, namely Clause 3.15 of the amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA) makes it clear that all disputes arising between the developer (petitioner) and the co-developer (second respondent) and EPDPL (first respondent) concerning / relating any matter, question or issue



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under the co-development agreement or any amendment thereof including the amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA) are arbitrable disputes, this Court finds that, *prima facie*, there exists an arbitration agreement between the petitioner and the respondents 1 and 2 in both the Co-Development Agreement dated 20.05.2016 (CDA) and the amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA).

13. Though this Court is appointing two arbitrators, as prayed for in this petition, the rights of the second respondent will have to be fully protected by giving liberty to them to raise all objections, which includes the objection regarding maintainability of the arbitral claim as well as the arbitrability of the dispute before the arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, 1996. In view of the well-settled position of law as recorded *supra* in this order, namely that the arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, 1996 confers complete arbitral autonomy to rule, determine and act on the issues pertaining to impleadment or deletion of a party, signatory or non-signatory, arbitrability and non arbitrability, necessary or not necessary party, joinder



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or non-joinder to the arbitration in depth even if the ruling is contrary to that of the referral Court under Section 11 (6) of the Arbitration and Conciliation Act, 1996, this Court has to necessarily appoint the arbitrators as prayed for in this petition. When on a *prima facie* consideration, this Court finds the existence of an arbitration clause with regard to the subject matter of dispute raised by the petitioner, this Court will have to necessarily constitute the arbitral Tribunal as prayed for in this petition, leaving it open for the second respondent to agitate all their objections with regard to the maintainability of the petitioner's claim as well as the arbitrability of the dispute before the arbitral Tribunal.

14. For the foregoing reasons, this Court will have to appoint two arbitrators in accordance with the arbitration clause, since there is no consensus between the parties with regard to the name of the arbitrators, one to be nominated by each of the parties. The two arbitrators appointed by this Court shall appoint the presiding arbitrator by consensus in accordance with the arbitration clause. The arbitral Tribunal comprising of three members shall adjudicate the dispute between the parties arising out of the Co-Development Agreement dated 20.05.2016 (CDA) and the amendment



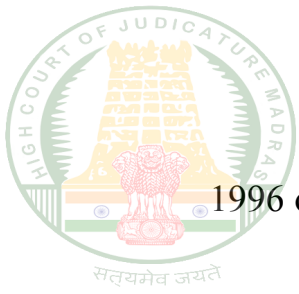
agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA).

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15. In the result, this Arbitration Original Petition is allowed as prayed for by issuing the following directions:

(a) Mr. Justice Akil Kureshi, Former Chief Justice, Rajasthan High Court who is having office at No.617, Raheja Chambers, Free Press Journal Marg, Nariman Point, Mumbai - 400 021 (Mobile No.94084 81511) and Dr. Justice S. Muralidhar, Former Chief Justice, Orissa High Court who is having office at Ground Floor, No.15, Sadhna Enclave, Panchasheel Park, New Delhi - 110017 (Mobile No.98727 27986) are appointed as the Arbitrators, who shall appoint a presiding arbitrator by consensus and the three member arbitral Tribunal shall adjudicate the dispute between the petitioner and the respondents arising out of the Co-Development Agreement dated 20.05.2016 (CDA) and the amendment agreement to the Co-Development Agreement dated 06.04.2024 (Amended CDA) by passing an arbitral award;

(b) The Arbitrators shall be paid their remuneration / fees in accordance with the 4th schedule of the Arbitration and Conciliation Act,



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1996 or by the mutual consent of both the parties;

(c) Both the parties shall equally share the arbitrator's fees;

(d) The Arbitral Tribunal, comprising of the aforesaid three members, shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes
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