IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

MONDAY, THE TWENTY EIGHTH DAY OF JULY TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

ARBITRATION APPLICATION NO: 20 OF 2020

Between:

M/s.Elite Foundation a Partnership Firm, registered under the Indian Partnership Act, 1932 having Its office at 6-3-679, Somajiguda, Hyderabad represented by its Managing Partner Mr.BashaMohiudin.

...APPLICANT

AND

1. AqeelaSubhani W/o. Dr. Khaja Najamuddin Subhani aged about 75 years, Occ Housewife R/o.101, Tangmere Crecent Halifax Nava Scotia, B3MIK2 Canada Rep., by her GPA Hammaad El Momin Subhani, S/o. Dr. KhajaNajamuddin Subhani, aged about 38 years, Occ: Business R/o. H.No. 8-2-596/8, Road.10, Banjara .Hills, Hyderabad- 500 034.
2. Dr. Khaja NajamuddinSubhani S/o Subhani, aged about 77 Years, Occ Medical Practitioner, R/o.101, Tangmere CrecentHalifax, Nava Scotia, B3MIK2 Canada.
3. Hamad El MominSubhani S/o Dr. KhajaNizamuddinSubhani, aged about 38 years, Occupation Business, R/o. H.No.8-2-596/8, Road No.10, Banjara Hills, Hyderabad- 500034.
4. Sulwa Firdaus Subhani, D/o Mr. Khaja Najmuddin Subhani, aged about 41 years, Occ Medical Practitioner, R/o.101, Tangmere CrecentHalifax, Nava Scotia, B3MIK2 Canada.

...RESPONDENTS

Arbitration Application Under Section 11 (5) & (6) of Arbitration & Conciliation Act, 1996 praying that this Hon'ble Court may be pleased to appoint sole arbitrator to adjudicate the claims and disputes between the applicant and the Respondents.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 10 days in filing the above Arbitration Application.

Counsel for the Applicant: Sri S. M. Rafee

Counsel for the Respondents: Sri Prabhakar Sripada

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

ARBITRATION APPLICATION No. 20 of 2020

ORDER:

The present Arbitration Application is filed under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act, 1996') for appointment of a sole arbitrator to resolve the disputes between the parties.

2. Heard Sri. D. Prakash Reddy, learned senior counsel appearing for the learned counsel for the applicant and Sri. Prabhakar Sripada, learned senior counsel appearing for the counsel for the Respondents. Perused the Record.

3. The applicant and the Respondents through one Salahuddin Afsar who is the GPA Holder of the Respondent No.1 herein entered into the following agreements for development of the property bearing Municipal No. 6-3-679 admeasuring 1,660 Sq. Yards situated at Somajiguda, Hyderabad, into a multi-storied complex:

i. Memorandum of Understanding dated 02.08.1992 – the primary document entered into between the parties. The

covenants of this deed state preliminary obligations of the parties. Clause 22 of this deed contemplates that any development agreement entered into by both parties shall be treated as a part and parcel of this deed. Clause 25 thereof contains an arbitration agreement.

ii. Development Agreement dated 28.08.1992. This deed delineates the rights and duties of both parties. Among others, Clause 9 thereof contemplates the sharing ratio of the applicant and the respondents as 60:40%. Whereas, clause 15 contemplates that the construction of the complex is to be completed within 2 years from the date of obtaining municipal plans and no objection certificate. Clause 27 thereof contains an arbitration agreement

iii. After completion of the building construction in 2002, the Applicant and the Respondents herein entered into a Memorandum of Understanding dated 09.02.2005. As per the MoU dated 09.02.2005, the ground and the first floor were sold out to various parties; Clause 4 thereof contemplates that the Respondents herein were the absolute

owners of the second floor, whereas the third and fourth floor as per Clause 5 was to be divided among equally *i.e.*, 50% each among the parties. Similarly, as per Clause 6 the Office area in the said complex was to be given to the K. Salahuddin Afsar. Clause 19 thereof contains arbitration agreement.

4. It is the case the case of the Applicant that disputes arose between the parties after 18.05.2017 when Surana Telecom who was the tenant of the Second Floor vacated the premises; and the respondents were thereafter refusing to open their respective locks in the second floor of the complex, thereby blocking the entrances to the Applicants share in the third and fourth floors.

5. While so, it is the case of the Applicant that the on 18.11.2016 the Respondent No. 1 herein Represented by her son *i.e.*, the Respondent No.3 herein had issued a legal notice invoking the arbitration clauses in MoU dated 02.08.1992, Development Agreement dated 28.08.1992 and MoU dated 09.02.2005. It is contended that though the Applicant herein in their reply notice 20.12.2016 agreed for the disputes to be referred to an arbitrator

and had thereby called forth the Respondent No.1 herein to name an arbitrator, the Respondents herein in contravention to their own legal notice dated 18.11.2016 had initiated proceedings before the National Consumer Dispute Resolution Commission, New Delhi (for short 'NCDRC') Aggrieved by the said action the present arbitration application is filed seeking appointment of an arbitrator.

6. Learned Senior Counsel for the Applicant herein contends that, the proceedings before the NCDRC are not maintainable as the Respondents herein have first invoked the arbitration clause in their legal notice dated 18.11.2016. Thus, it is contended that the disputes ought to be referred to an arbitrator for resolution.

7. *Per contra,* learned senior counsel for the Respondents herein contends that the disputes between the applicant and the respondents are primarily consumer disputes which are public in nature, and are thus, non-arbitrable; that the present application is further not maintainable as the applicant herein had failed to file an application under Section 8 of the Act, 1996 before the NCDRC seeking for reference of the disputes to arbitration before filing the present application. In support of his contentions reliance is placed

on the decisions in ***M. Hemalatha Devi and Ors. Vs. B. Udayasri***[1], ***Vidya Drolia Vs. Durga Trading Corporation***[2], ***Emaar MGF Land Limited Vs. Aftab Singh***[3], ***Rosedale Developers Private Limited Vs. Aghore Bhattacharya and Ors***[4], ***National Seeds Corporation Limited Vs. M. Madhusudhan Reddy & Ors***[5], and ***Secretary, Thirumurugan Corporation Limited Vs. M. Madhusudhan Reddy & Anr***[6].

8. *In reply,* learned senior counsel for the Applicant herein submits that once a notice under section 21 of the Act, 1996 is issued, the same would constitute the commencement of arbitration proceedings. Therefore, any subsequent proceedings instituted would have to give way to the former as per the Scheme of the Act, 1996.

9. I have taken note of their respective contentions.

10. The issue of non-arbitrability of consumer disputes is no longer *res integra* in view of the decision in ***Emaar MGF*** (supra)

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[1] (2024) 4 SCC 255
[2] (2021) 2 SCC 1
[3] (2019) 12 SCC 751
[4] (2018) 11 SCC 337
[5] (2012) 2SCC 506
[6] (2004) 1 SCC 305

which was followed in ***M. Hemalatha Devi's*** case (supra). The Hon'ble Supreme Court while considering the scope of the Consumer Protection Act, had observed that a consumer had a choice to elect his remedy by either filing a consumer complaint before a Judicial authority or going for arbitration. The Apex Court further held that the jurisdiction of Consumer Courts would not be ousted merely because the builder approached a Court first under Section 11 of the Act, 1996, as the jurisdiction of a Court would be determined by the nature of the dispute, public policy, will of the legislature and election or choice of the consumer.

11. Further, the contention of the learned senior counsel for the applicant that as the Respondents themselves have first issued a notice of dispute under section 21 of the Act, 1996, they are preempted from subsequently approaching the consumer courts, though attractive at first blush, cannot be accepted when the purpose behind enactment of the Consumer Protection Act is considered. It is to be seen that the Consumer Protection Act, is a beneficial legislation enacted to protect the interests of the consumers. In ***M. Hemalatha Devi's*** case (supra) the Hon'ble Supreme Court while noting the jurisdiction and purpose of the

Consumer Courts has observed that a consumer cannot be deprived of the remedies available under the Consumer Protection Act, only on the ground that an arbitration agreement exists between the parties. The relevant observations are as under:

"14. xxx

It was held that the 1986 Act was enacted to provide better protection of the interest of consumers and for providing a redressal mechanism, which is cheaper, easier, expeditious and effective. For this purpose, various quasi-judicial forums were setup at district, state and national level with a wider range of powers vested in these Judicial Authorities. **These Judicial Authorities were vested with the powers to give relief of a specific nature and to award compensation to the consumer wherever it was felt necessary to impose penalty for non-compliance of their orders, and the judicial authorities were vested with such powers. Now compare this with the power of the arbitrator. An arbitrator does not have the power to impose a penalty.** This is also one of the essential differences between the two forums. It was finally held that the provisions given under the 1986 Act were in addition to, and not in derogation to, any other provisions or any other law for the time being in force.

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16. This Court in a series of decisions, while considering both the provisions in the Consumer Protection Act, 1986 and the Arbitration Act, 1996, has held that **the Consumer Protection Act being a special and beneficial legislation, the remedies provided therein are special remedies and a consumer cannot be deprived of them should he choose to avail such a remedy, in spite of an arbitration agreement between the parties.** It is a remedy provided to the consumer where the consumer finds a defect in either goods or services provided to him and therefore seeks a redressal of his grievances before the consumer forum provided to him by the legislature. While referring to a plethora of precedents in the matter, this Court had held in Emaar III (supra) **that not only the proceedings under the 1986 Act are special proceedings which will continue under the Act in spite of the arbitration**

agreement, but there would also be a large number of other proceedings as well which ought to continue in spite of an arbitration agreement such as proceedings in Criminal Court, a Commercial dispute of a particular nature or any other non-arbitrable dispute."

(Emphasis supplied)

When the aforesaid ratio is applied to the facts at hand, this Court is of the view that though the Respondents herein had initially sent a notice invoking the arbitral clause, as they had thereafter specifically elected to file a consumer complaint before the NCDRC *i.e.,* they had approached a Judicial Authority before even proposing the name of an arbitrator, thus the disputes would be rendered non-arbitrable.

12. *Even otherwise*, in ***Archetype India Construction Consultants Private Limited Vs. The Bombay Dyeing and Mfg. Co. Limited***[7], the High Court of Bombay through Justice D. Y. Chandrachud *(as his lordship then was)* held that an arbitration application cannot be preferred without filing an application under Section 8(1) of the Act, 1996, before the Court where the first remedy was preferred, as they are parallel proceedings. This Court is in respectful agreement with the views expressed above.

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[7] MANU/MH/0901/2012

Therefore, the present application cannot be entertained without the Applicant herein first filing an application of under Section 8(1) of the Act, 1996 before the NCDRC.

13. In light of the foregoing discussion, the present arbitration application is dismissed.

Pending miscellaneous petitions if any shall stand closed. No order as to costs.

Sd/- M. RAMANA KRISHNA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. Mr.BashaMohiudin Managing Director,M/s.Elite Foundation a Partnership Firm, registered under the Indian Partnership Act, 1932 having Its office at 6-3-679, Somajiguda, Hyderabad Mr
2. AqeelaSubhani W/o. Dr. Khaja Najamuddin Subhani aged about 75 years, Occ Housewife R/o.101, Tangmere Crecent Halifax Nava Scotia, B3MIK2 Canada Rep., by her GPA Hammaad El Momin Subhani, S/o. Dr. KhajaNajamuddin Subhani, aged about 38 years, Occ: Business R/o. H.No. 8-2-596/8, Road.10, Banjara .Hills, Hyderabad- 500 034.
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6. One CC to Sri S. M. Rafee, Advocate [OPUC]
7. One CC to Sri Prabhakar Sripada, Advocate [OPUC]
8. Two CD Copies

VH/psl

HIGH COURT

DATED: 28/07/2025



ORDER

ARBAPPL.No.20 of 2020

DISMISSING THE ARBITRATION APPLICATION

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13/8/25