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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 1050/2025**

SHUBHASH CHANDER AGGARWAL

.....Petitioner

Through: Mr. Siddharth Mittal, Mrs. Shilpa G
Mittal, Mr. Sumit Kumar Sharma, Mr.
Abhijeet Varshney, Advs.

versus

M/S. SUNCITY HI-TECH INFRASTRUCTURES PVT. LTD

.....Respondent

Through: Mr. Rahul Dubey & Mr. Mohd. Adnan
Arafat, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **29.10.2025**

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.
2. The facts are that the State of Uttar Pradesh formulated a policy to promote and facilitate private sector participation in developing Hi-Tech Townships in various towns of the State of Uttar Pradesh. In response to the said policy, a group of 7 companies namely: M/s Suncity Projects Pvt. Ltd., M/s Nikhil Footwears Pvt. Ltd., M/s Odeon Builders Pvt. Ltd., M/s E-City Entertainment (India) Pvt. Ltd., M/s Pan India Paryatan Ltd., M/s Essel Housing Projects Pvt. Ltd. and M/s Ansal Housing & Construction Ltd. ("***Seller Companies***") entered a Memorandum of Understanding ("***MOU***") dated 08.10.2004 to form a consortium of developer companies with the object



of development of Hi-Tech Townships in the State of Uttar Pradesh.

3. *Vide* letter dated 21.05.2005, the Government of Uttar Pradesh selected the consortium led by M/s Suncity Projects Pvt. Ltd. to undertake the development of the Hi-Tech Township at Ghaziabad.

4. To facilitate the development of the Hi-Tech Township at Ghaziabad, M/s Suncity Infrastructure Pvt. Ltd. was initially designated as the Special Purpose Vehicle (SPV) company. Later, new entity named M/s Suncity Hi-Tech Infrastructure Pvt. Ltd. ("**respondent company**") was incorporated. Thereafter, *vide* letter dated 21.12.2005, the Government of Uttar Pradesh recognized the respondent company as the developer for the Hi-Tech Township at Ghaziabad. Consequently, a MOU dated 22.12.2005 was executed between Ghaziabad Development Authority and the respondent company for the development of the Hi-Tech Township at Ghaziabad.

5. Subsequently, the Seller Companies *vide* Share Purchase Agreement dated 29.05.2010, sold their shares held in the respondent company to M/s Opportunity Developers Pvt. Ltd. A Supplementary Agreement dated 31.05.2010 was executed by and amongst M/s Opportunity Developers Pvt. Ltd., the Seller Companies and the respondent company. Under said Supplementary Agreement, M/s Opportunity Developers Pvt. Ltd. and the respondent company gave an option to the seller companies to obtain developed land at Hi-Tech Project, Ghaziabad (UP). Said option was exercised by M/s Suncity Projects Pvt. Ltd., M/s Nikhil Footwears Pvt. Ltd., M/s Odeon Builders Pvt. Ltd., and M/s Ansal Housing & Construction Ltd. The seller companies which had exercised the option to obtain developed land, entered into MOUs dated 31.05.2010 with the respondent company.

6. Under the terms of the said MOUs, the respondent company agreed to allot one acre of developed plotted land to each of the exercising seller



companies, including M/s Nikhil Footwears Pvt. Ltd.

7. Thereafter, *vide* Deed of Assignment dated 06.08.2021, M/s Nikhil Footwears Pvt. Ltd. assigned all its rights and entitlements under the MOU dated 31.05.2010 in favor of the petitioner.

8. The said MOU dated 31.05.2010 contains an arbitration clause being Clause No. 12, which reads as under:-

“12. That in case of any dispute/difference of opinion arising out of or in connection with this Agreement, the same shall be referred for Arbitration to a sole Arbitrator to be appointed by mutual consent of both the parties and the decision of the Arbitrator shall be binding on parties to this Agreement.”

9. It is stated that the petitioner addressed letters to the respondent company, requesting allotment of one acre developed plotted area in Hi-Tech Township at Ghaziabad. However, the respondent company has failed to make the requisite allotment or intimate the estimate cost for the developed one acre of plotted land.

10. Since disputes arose between the parties, the petitioner invoked arbitration *vide* legal notice dated 12.02.2025 and thereafter, filed the present petition.

11. Mr. Dubey, learned counsel appearing for the respondent, has handed over a reply in the Court, which is taken on record.

12. He states that in terms of Clause No. 4.4 of the Supplementary Agreement, M/s Nikhil Footwears Pvt. Ltd did not have the right to assign. Hence, there is no arbitration clause between the petitioner and the respondent.

“4.4 Assignment

This Agreement and the rights and liabilities hereunder shall bind and inure to the benefit of the respective successors,



assigns /permitted assigns of the Parties hereto, as the case may be. The Sellers shall not assign or transfer any of its rights and liabilities hereunder without the prior written consent of the Acquirer and the Company. However, Acquirer is permitted to assign or transfer any of its rights and liabilities hereunder to any Group or Associate or Affiliate Entity of the Acquirer but shall not be permitted to assign to any third party without the prior written consent of the Sellers. It is clarified that if for the purpose of bringing in funds /money for the "Project" or "Company Business" the Acquirer comes out with public issue or right issue or enter into some kind of agreement or arrangement with some private equity investors or venture capitalist or with Banks or Financial Institutions, the rights vested to such investor/bank/ financial institution pursuant to their investment shall not be constituted as an assignment within the meaning of this clause.”

13. A perusal of Clause No. 4.4 of the Supplementary Agreement, reproduced above, shows that M/s Nikhil Footwears Pvt. Ltd had agreed not to assign or transfer any of its right hereunder i.e., the Supplementary Agreement. Further, the Supplementary Agreement does not contain any clause with regard to exercising the option to purchase one acre of plot.

14. However, as per Clause No. 11 of the MOU dated 31.05.2010, M/s Nikhil Footwears Pvt. Ltd was entitled to assign. The said clause is extracted below:-

“11. That the NFPL shall be entitle to assign this agreement.”



15. The Court at the referral stage is only required to take a *prima facie* view pertaining to existence of a valid arbitration agreement between the parties and is not to interpret the documents or adjudicate the matter on merits.

16. All other contentions of the respondent are on the merits of the case which falls under the ambit of the Arbitrator.

17. The opinion of the Court is only a *prima facie* view and all rights and contentions, claims and counter-claims of the parties are left open to be adjudicated by the learned Arbitrator including jurisdiction.

18. For the said reasons, I am of the view that there is a valid arbitration clause and disputes between the parties which need to be adjudicated through arbitral mechanism.

19. For the said reasons, the petition is allowed, with the following directions:

- i) Ms. Maninder Acharya (Senior Advocate) (Mob. No. 9810163078) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').
- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- v) 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.

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

20. The present petition is disposed of accordingly.

JASMEET SINGH, J

OCTOBER 29, 2025/DM