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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 308/2025, CM APPL. 68523/2025 & CM APPL. 68522/2025**

CONCEPT CAPITAL INFRA PROJECTS PVT. LTD.Appellant
Through: Mr. Asim Naeem and Mr. Cherry Gupta, Advs.

versus

MIRAJ ENTERTAINMENT LTD.Respondent
Through: Mr. Arun Upadhyay, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

ORDER

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03.11.2025

1. The appeal in hand is directed against the Order dated 15.09.2025, passed by the learned Principal Judge, Family Court, South East, Saket Courts, New Delhi (hereinafter referred to as 'the Court') in CS (COMM) 316/2025, whereby the Court below has rejected appellant's application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996').
2. The facts appertain for the present purposes are that the plaintiff had instituted a suit for recovery of money, wherein the defendant filed an application dated 14.05.2025 under Section 8 of the Act of 1996, asserting that the suit was not maintainable in view of the Arbitration Clause.
3. It is pertinent to note that although, the Court below has observed that the defendant had filed a written statement, but learned counsels for the parties are ad-idem that the written statement had not been filed, when the application under Section 8 of the Act of 1996 was filed. Be that as it may, the same does not make any difference so far as the controversy involved in the present case is concerned.



4. Regarding the basic question involved, suffice it to say, that the Court rejected the said application under Section 8 of Act of 1996, *inter alia* observing that what had been relied by the defendant is the terms of Letter of Intent dated 07.05.2018, which had been superseded by the Memorandum of Understanding (hereinafter ‘MOU’) dated 11.01.2019.

5. Learned counsel for the Appellant argued that the learned Court has erred in rejecting appellant’s application under Section 8 of the Act of 1996 inasmuch as the Letter of Intent clearly stipulated a condition in which a specific remedy of settling the dispute by way of arbitration was given.

6. Inviting Court’s attention towards condition No. 27 of the Letter of Intent dated 07.05.2018, learned counsel argued that in the face of Arbitration Clause, no suit was maintainable and hence, the Court has erred in rejecting the subject application.

7. Learned counsel for the Respondent, on the other hand, invited our attention towards the MOU, signed by the parties-Appellant (defendant) & respondent (plaintiff) and argued that Clause 8.8 (at page 93) and Clause 12 (at page 101), clearly provide that the terms of Letter of Intent dated 07.05.2018 will stand superseded and both the parties viz. plaintiff and the defendant would be governed by the terms of the MOU.

8. Learned counsel for the Appellant relied upon judgment of Hon’ble the Supreme Court in the case of ***Sanjiv Prakash vs. Seema Kukreja and Ors., reported in (2021) 9 SCC 732*** and argued that in light of the judgment in the case of ***Sanjiv Prakash*** (supra), the order passed by the Court below deserves to be set aside.

9. Heard learned counsel for the parties.

10. True it is, that the Letter of Intent dated 07.05.2018, contains a condition of arbitration for the purposes of resolution of the disputes, but a simple look at Clause 8.8 and Clause 12 of the MOU, clearly shows that the



terms of MOU became operative and the conditions of Letter of Intent came to be superseded.

11. According to us, once the terms and conditions of Letter of Intent were superseded, it is only the terms of MOU, which would govern the relationship between the plaintiff and the defendant and the conditions of Letter of Intent becomes redundant.

12. So far as the judgment in the case of ***Sanjiv Prakash (supra)*** is concerned, the facts involved therein are clearly distinguishable inasmuch as, in the case of ***Sanjiv Prakash (supra)***, on earlier occasion, an MOU was signed and the same came to be superseded, whereas in the instant case, the Letter of Intent has been superseded.

13. According to us, the Letter of Intent and MOU have different connotation and different legal implications. Since in the instant case, though the Letter of Intent which was issued was duly accepted by the parties, but thereafter the MOU and hence, the terms of MOU have to be given due effect and weightage and Letter of Intent will have to concede to the MOU.

14. That apart, in the case of ***Sanjiv Prakash (Supra)***, the issue was in relation to appointment of arbitrator, whereas in the instant case, the issue is about maintainability of the suit itself. When it comes to the appointment of arbitrator under Section 11, the Court may take a liberal view because, it is after appointment of arbitrator, he can rule upon his own jurisdiction or pronouns upon the maintainability of the claim under Section in light of Section 16 of the Act of 1996.

15. We therefore, do not find any error in the impugned Order dated 15.09.2025.

16. The following part of the judgment in ***Sanjiv Prakash (supra)*** fortifies the view, which we have taken:-



a. “22. Judged by the aforesaid tests, it is obvious that whether the MoU has been novated by the SHA dated 12.04.1996 requires a detailed consideration of the clauses of the two agreements, together with the surrounding circumstances in which these agreements were entered into, and a full consideration of the law on the subject. None of this can be done given the limited jurisdiction of a court under Section 11 of the 1996 Act. As has been held in para 148 of *Vidya Drolia* [*Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549], detailed arguments on whether an agreement which contains an arbitration clause has or has not been novated cannot possibly be decided in exercise of a limited *prima facie* review as to whether an arbitration agreement exists between the parties. Also, this case does not fall within the category of cases which ousts arbitration altogether, such as matters which are in rem proceedings or cases which, without doubt, concern minors, lunatics or other persons incompetent to contract. There is nothing vexatious or frivolous in the plea taken by the appellant. On the contrary, a Section 11 court would refer the matter when contentions relating to non-arbitrability are plainly arguable, or when facts are contested. The court cannot, at this stage, enter into a mini trial or elaborate review of the facts and law which would usurp the jurisdiction of the Arbitral Tribunal.”

17. The appeal, therefore, fails.

18. All interlocutory applications stand disposed of.

DINESH MEHTA, J

VIMAL KUMAR YADAV, J

NOVEMBER 3, 2025/ps