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

Date of decision: 21.05.2025

+ **ARB.P. 2036/2024 & CRL.M.A. 3869/2025**

M/S SURPAL CYCLES PVT. LTD. & ANR.Petitioner

Through: Mr. Saurabh D. Karan Singh, Ms.
Vasudha Saini, Advs.

versus

M/S CHETANYA BUILDCON PVT. LTD. & ORS.Respondent

Through: Mr. Shreyans Singhvi, Ms. Akanksha
Agrawal, Ms. Taniya Singh, Advs.
Mr. Prosenjeet Banerjee, Mr. Sarad
K. Sunny, Mr. Keshav M., Mr.
Sarthak, Ms. Archika, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (Oral)**

1. This is a petition filed under Section 11(4) read with Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator to adjudicate the disputes between the parties, arising out of the registered Agreement to Sell dated 03.09.2019.
2. At the outset, Mr. Singh, learned counsel for the petitioner makes an oral request to delete respondent Nos 7 and 8. Hence, respondent nos. 7 and 8 are deleted from the array of parties.
3. Briefly stating the facts are that the respondent Nos. 2 to 5 being the owners of a plot of land measuring 964 square yards, located at No. 22,



Block–W, Greater Kailash–II, New Delhi–110048 (hereinafter referred to as “**Plot**”), with the intention of redeveloping and reconstructing a residential building on the Plot, entered into a Collaboration Agreement with Respondent No. 1. Respondent No. 1 in lieu of carrying out the redevelopment / reconstruction was to become entitled to sell certain areas in the redeveloped residential building.

4. Pursuantly, the petitioners agreed to purchase the Entire Second Floor of the building consisting of five bedrooms with attached bathrooms, one drawing – cum – dining room, one kitchen, front and rear balconies with exclusive lift, lift lobby, portion of the stilt area alongwith 22.5% undivided, indivisible and impartible ownership rights in the plot (hereinafter referred to as “**subject property**”). In this regard, the petitioners entered into the Agreement to Sell dated 03.09.2019 with respondent nos. 1 – 5 (whereby respondent nos. 2- 5 were represented by respondent no. 6). As per the said agreement, the subject property was supposed to be delivered to the petitioners by the respondent nos. 1-5 on or before 03.01.2021.

5. The arbitration clause is contained as clause 31 of the Agreement to Sell dated 03.09.2019 and the same reads as under:

“31. That any disputes and differences arising between the parties, pertaining to and arising out of the present Agreement, shall be referred to the sole arbitrator, to be mutually appointed by the parties, whose decision shall be final and binding upon the parties. The provisions of Arbitration and Conciliation Act, 1996, shall be applicable to such proceedings. The place of arbitration shall be at New Delhi.”



6. Since the respondent(s) failed to deliver the subject property, the petitioners invoked arbitration vide legal notice dated 17.07.2024 and thereafter, filed the present petition.

7. All the respondent(s) have been served and respondent Nos. 1 and 2 to 5 are represented. The reply has also been filed.

8. Mr. Banerjee, learned counsel appearing on behalf of Respondent No. 2, submits that the disputes between the parties are not arbitrable. In support of this contention, he relies on Clause 28 read with Clause 33 of the Arbitration Agreement dated 03.09.2019, which reads as under:

“28. That in case any of the parties hereto infringes any of the terms and conditions of this Agreement to Sell, then the other party shall be entitled to get this transaction enforced through the Court of law by Specific Performance of the Contract, at the cost and expenses of the defaulting party.

33. That this transaction has taken place at New Delhi and as such Delhi Courts shall have exclusive jurisdiction to entertain any dispute arising out or in any way touching or concerning this deed.”

9. He further submits that in view of the above clauses, the parties had expressly agreed that the terms and conditions of the Agreement to Sell dated 03.09.2019 would be enforceable only through a court of law by way of a suit for specific performance. Moreover, in the present case, the petitioner is seeking execution of the sale deed for his portion, which is covered squarely by the above clauses and as per the above clauses, the petitioner should have filed a suit for specific performance.

10. In support, he relies upon the judgment passed by the Hon'ble



Supreme Court in ***Emaar India Limited vs. Tarun Aggarwal Projects LLP and Anr.*** (2023) 13 SCC 661 and more particularly para-Nos. 12,13 and 19 which reads as under:

“12. While considering the aforesaid question/issue, the relevant provisions of the agreement, namely, Clauses 36 and 37, are required to be referred to, which are as under:

“Dispute Resolution & Jurisdiction

36. In case of any conflict or difference arising between the parties or in case either party refused or neglects to perform its part of the obligations under this addendum collaboration agreement, inter alia as mentioned in Clauses 3, 6 and 9 hereinabove, then the other party shall have every right to get this agreement specifically enforced through the appropriate court of law.

37. Save & except Clause 36 hereinabove mentioned, all or any dispute arising out of or touching upon or in relation to the terms of this agreement including the interpretation and validity thereof, and the respective rights and obligations of the parties, shall be settled through under the provisions of the Arbitration and Conciliation Act, 1996 wherein both the parties shall be entitled to appoint one arbitrator each and the arbitrators so appointed shall appoint a third arbitrator of rank of retired Judge of any High Court. The arbitration proceedings shall be governed by the



provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments/modification thereto for the time being in force. The arbitration proceedings shall be held at Delhi.”

13. On a bare reading of Clause 36 of the agreement, it clearly stipulates that in the event of any dispute as mentioned in Clauses 3, 6 and 9, other party shall have a right to get the agreement specifically enforced through the appropriate court of law. As per Clause 37, save and except Clause 36, all or any dispute arising out of or touching upon or in relation to the terms of the addendum agreement ... shall be settled through under the provisions of the Arbitration and Conciliation Act, 1996. Thus, with respect to any dispute as mentioned in Clauses 3, 6 and 9, such disputes are not arbitrable at all. It cannot be disputed that both the parties are governed by the Addendum Agreement dated 19-4-2011.

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19. On the question, who decides on non-arbitrability of the dispute, after referring to and considering the earlier decisions on the point, more particularly, the decisions in Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd. [Garware Wall Ropes Ltd. v. Coastal Marine Constructions & Engg. Ltd., (2019) 9 SCC 209: (2019) 4 SCC (Civ) 324], United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd. [United India Insurance Co. Ltd. v. Hyundai Engg. & Construction Co. Ltd., (2018) 17 SCC 607 :



(2019) 2 SCC (Civ) 530] and Narbheram Power & Steel [Oriental Insurance Co. Ltd. v. Narbheram Power & Steel (P) Ltd., (2018) 6 SCC 534 : (2018) 3 SCC (Civ) 484] , it is observed and held in Vidya Drolia case [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] that the question of non-arbitrability relating to the inquiry, whether the dispute was governed by the arbitration clause, can be examined by the courts at the reference stage itself and may not be left unanswered, to be examined and decided by the Arbitral Tribunal. Thereafter, in para 153, it is observed and held that the expression, “existence of arbitration agreement” in Section 11 of the Arbitration Act, would include aspect of validity of an arbitration agreement, albeit the Court at the reference stage would apply the prima facie test. It is further observed that in cases of debatable and disputable facts and, good reasonably arguable case, etc. the Court would force the parties to abide by the arbitration agreement as the Arbitral Tribunal has the primary jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability.”

11. I have heard the learned counsels for both the parties.

12. It is a well settled position of law that the referral Courts under Section 11 of the Arbitration and Conciliation Act, 1996 is only required to see whether there is a valid arbitration agreement or not and further, make a prima-facie enquiry regarding the claims raised by the petitioner. In this



regard, reliance is placed on the judgment passed by the Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. V. Krish Spinning***, 2024 SCC OnLine SC 1754. The operative portion reads as under: (Para nos. 107,108,110,114, 128 and 133)

“107. The parties have been conferred with the power to decide and agree on the procedure to be adopted for appointing arbitrators. In cases where the agreed upon procedure fails, the courts have been vested with the power to appoint arbitrators upon the request of a party, to resolve the deadlock between the parties in appointing the arbitrators.

108. Section 11 of the Act, 1996 is provided to give effect to the mutual intention of the parties to settle their disputes by arbitration in situations where the parties fail to appoint an arbitrator(s). The parameters of judicial review laid down for Section 8 differ from those prescribed for Section 11. The view taken in SBP & Co. (supra) and affirmed in Vidya Drolia (supra) that Sections 8 and 11 respectively of the Act, 1996 are complementary in nature was legislatively overruled by the introduction of Section 11(6-A) in 2015. Thus, although both these provisions intend to compel parties to abide by their mutual intention to arbitrate, yet the scope of powers conferred upon the courts under both the sections are different.

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110. The scope of examination under Section 11(6-A) is



confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.

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128. On the first issue, it was observed by us that the Limitation Act, 1963 is applicable to the applications filed under Section 11(6) of the Act, 1996. Further, we also held that it is the duty of the referral court to examine that the application under Section 11(6) of the Act, 1996 is not barred by period of limitation as prescribed under Article 137 of the Limitation Act, 1963, i.e., 3 years from the date when the right to apply accrues in favour of the applicant. To determine as to when the right to apply would accrue, we had observed in paragraph 56 of the said decision that “the limitation period for filing a petition under Section 11(6) of the Act, 1996 can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal on part of that other party in complying with the requirements mentioned in such notice.”

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133. Thus, we clarify that while determining the issue of limitation in exercise of the powers under Section 11(6) of the Act, 1996, the referral court should limit its enquiry to examining whether Section 11(6) application has been filed



within the period of limitation of three years or not. The date of commencement of limitation period for this purpose shall have to be construed as per the decision in Arif Azim (supra). As a natural corollary, it is further clarified that the referral courts, at the stage of deciding an application for appointment of arbitrator, must not conduct an intricate evidentiary enquiry into the question whether the claims raised by the applicant are time barred and should leave that question for determination by the arbitrator. Such an approach gives true meaning to the legislative intention underlying Section 11(6-A) of the Act, and also to the view taken in In Re: Interplay (supra).”

13. A perusal of the aforesaid paragraphs indicates that, the referral Court under Section 11 of the Arbitration and Conciliation Act, is required to examine the existence of an arbitration agreement and nothing more. The *prima-facie* examination should be restricted only to the issue where the claims are within the period of limitation and are not dead wood.

14. The issue(s) raised by the respondent No. 2 would squarely fall within the *Kompetenz-Kompetenz* doctrine of the arbitrator. The principle of *Kompetenz-Kompetenz* signifies that the arbitrator is empowered, in the first instance, to determine and rule upon its own jurisdiction, including any objections concerning the existence, validity, or scope of the arbitration agreement.

15. To my mind, the arbitrator is better placed to adjudicate the issues and claims raised by the parties, as the arbitrator has the benefit of going through



all the relevant evidence and pleadings in much more detail than the referral court. The doctrine of *Kompetenz-Kompetenz* mandates that the arbitrator be given the first opportunity to rule on its own jurisdiction, thereby requiring minimal judicial interference.

16. The Hon'ble Supreme Court in ***Emaar India*** (supra), while following the law laid down by the Hon'ble Supreme Court in ***Vidya Drolia vs Durga Trading Corporation*** (2021) 2 SCC 1 held that the courts under section 11 of the Arbitration and Conciliation Act, 1996 need to only *prima facie* inquire about the arbitrability of the claims. The said issue has been dealt by the Hon'ble Supreme Court in ***SBI General*** (supra). The operative portion reads as under:

“113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in In Re : Interplay (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.



Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]”

(Emphasis supplied)

114. In view of the observations made by this Court in *In Re : Interplay* (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in *Vidya Drolia* (supra) and adopted in *NTPC v. SPML* (supra) that the jurisdiction of the referral court when dealing with the issue of “accord and satisfaction” under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in *In Re : Interplay* (supra).

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117.... Mere appointment of the arbitral tribunal doesn't in any way mean that the referral court is diluting the sanctity of “accord and satisfaction” or is allowing the claimant to walk



back on its contractual undertaking. On the contrary, it ensures that the principal of arbitral autonomy is upheld and the legislative intent of minimum judicial interference in arbitral proceedings is given full effect. Once the arbitral tribunal is constituted, it is always open for the defendant to raise the issue of “accord and satisfaction” before it, and only after such an objection is rejected by the arbitral tribunal, that the claims raised by the claimant can be adjudicated.

118. Tests like the “eye of the needle” and “ex-facie meritless”, although try to minimise the extent of judicial interference, yet they require the referral court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal.

(emphasis supplied)

17. On a *prima facie* inquiry, it is clear that there is a valid and subsisting arbitration agreement. The clause 31 of the Agreement to Sell dated 03.09.2019 mandates the disputes and differences between the parties be referred to an arbitrator.

18. As regards respondent no. 9 is concerned, I am of the view that respondent no. 9 is a veritable party to the Agreement to Sell. It is sister concern of respondent no..1 and had availed loans from the petitioners and the Agreement to Sell dated 03.09.2019 was entered into to convey the subject property to the petitioners so that the loan taken by the respondent



No. 9 could be set – off. Further, the respondent no. 9 is also a signatory to the Agreement to Sell dated 03.09.2019.

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

- i) Mr. Justice G.S. Sistani, (Retd.) (Mob. No. 9871300034) 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, including the claims regarding the maintainability 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 in the aforesaid terms.

JASMEET SINGH, J

MAY 21, 2025/sp

(Corrected and released on 29.05.2025)

Click here to check corrigendum, if any