HC-KAR
NC: 2026:KHC:60099
CMP No. 83 of 2026
CNR: KAHC010120112026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

CIVIL MISC. PETITION NO. 83 OF 2026

BETWEEN:

TABLESPACE TECHNOLOGIES LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 2013
AND BEARING CIN U74999KA2017PLC101040
HAVING REGISTERED OFFICE AT
46, LEVEL 5, PRESTIGE TRADE TOWER
PALACE ROAD, HIGH GROUND
SAMPANGI NAGAR, BENGALURU
KARNATAKA-560 001
REP. BY ITS AUTHORISED SIGNATORY
MR. ABHINAV SURANA.

…PETITIONER

(BY SMT. RASHMI SUBRAMANYA, ADVOCATE FOR
SMT. SMITHA R B., ADVOCATE)

AND:

GEMSCAP GLOBAL ANALYST PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 2013 AND
BEARING CIN U74999PN2016PTC166299
HAVING REGISTERED OFFICE AT
63/1/6, BLOCK NO. 1, FLOOR NO. 14
ITPP-INTERNATIONAL TECH PARK
WING 1 AND 2, AIGP, GRANT ROAD
KHARADI, VIMAN NAGAR, PUNE
MAHARASHTRA - 411 014
AND AT

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805-TOWER 1, WORLD TRADE CENTRE
KHARADI, PUNE 411 014
AND AT CLUSTER D, WING 2
3RD FLOOR, EON FREE ZONE
KHARADI, PUNE 411 014
REP. BY ITS MANAGING DIRECTOR
MR. NIRMAL SHRIKANT SUREKA

…RESPONDENT

(BY SRI. YESHU BABA R MISHRA., ADVOCATE)

THIS CMP IS FILED UNDER SECTION 11(5) OF ARBITRATION AND CONCILIATION ACT 1996 PRAYING TO APPOINT A SOLE ARBITRATOR ON BEHALF OF THE PARTIES IN TERMS OF CLAUSE 5 OF THE AGREEMENT DATED: 11.11.2022 (ANNEXURE A), SO AS TO CONSTITUTE THE ARBITRAL TRIBUNAL, TO ADJUDICATE UPON THE DISPUTES / DIFFERENCES BETWEEN THE PARTIES UNDER THE SAID AGREEMENT.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL ORDER

1. This petition is filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 (for short, "the Act"), seeking appointment of a sole Arbitrator for adjudication of the disputes that have arisen between the parties under the Service Agreement dated 11.11.2022, particularly in terms of Clause 5 thereof, produced at Annexure-A.

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2. The brief facts of the case are that the petitioner is a company incorporated under the Companies Act, 2013 and is engaged in the business of designing, building and operating managed office spaces for enterprises. The respondent is also a company incorporated under the Companies Act, 2013 and is engaged in the business of US equity market research and analysis. The petitioner and the respondent have entered into a Service Agreement on 11.11.2022 as per Annexure-A, under which the petitioner agreed to provide certain premises in a fully furnished condition to the respondent and further render services as per the terms agreed upon, subject to payment of the monthly service fee of Rs.18,50,000/ with an annual escalation of 5 percent.

3. Since disputes arose between the parties in respect of payment under the said Service Agreement, the petitioner, invoking the arbitration clause contained therein, issued a notice dated 08.01.2026, vide Annexure-

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C, to the respondent under Section 21 of the Act. The same was served to the respondent.

4. The respondent sent a reply dated 15.01.2026 vide Annexure-F to the said notice. Being dissatisfied with the reply, the present petition is filed seeking appointment of a sole Arbitrator.

5. Learned counsel appearing for the respondent has submitted that the petition filed by the petitioner is not maintainable. It is contended that, as per Clause 5 of the agreement, before invoking the jurisdiction of this Court for appointment of an arbitrator, the parties are required to discuss the dispute and attempt to settle the same amicably. Since the petitioner has not made any genuine attempt for conciliation before invoking Section 11 of the Act, the petition is premature. He further contended that this Court, in the case of ***Sobha Limited vs. Nava Vishwa Shashi Vijaya Krishna Properties Pvt. Ltd. and Ors.*** reported in ***2022 SCC OnLine Kar 1708***, has

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held that where the arbitration clause provides for an attempt to settle the dispute amicably before invoking arbitration, the parties are required to comply with the said condition. It is further contended that the email communications produced by the petitioner to show that the parties had attempted to settle the matter amicably do not relate to the present dispute but relate to the matter pending under the IBC. Hence, it is contended that the petitioner has not complied with the pre-condition contained in the arbitration clause and, therefore, the petition is liable to be dismissed.

6. Per contra, learned counsel appearing for the petitioner has contended that, in terms of the arbitration clause, the parties had made an attempt to settle the dispute amicably and, in this regard, the petitioner has produced the email correspondence exchanged between the parties. Since the parties failed to arrive at an amicable settlement, the petitioner was constrained to approach this Court by filing the present petition seeking

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appointment of a sole arbitrator. Learned counsel for the petitioner has further relied upon the judgment of this Court in the case of ***Mphasis Limited vs. Strategic Outsourcing Services Private Limited*** reported in ***2019 SCC OnLine Kar 4026*** and contended that the requirement of making an attempt to settle the dispute amicably before invoking the arbitration clause is only directory and not mandatory. It is further contended that, in view of Section 11(6-A) of the Act, the Court, while considering a petition for appointment of an arbitrator, is required to examine the existence of an arbitration agreement. He further contended that the judgment relied upon by the respondent in the case of ***Sobha Limited*** (supra) was rendered without considering the earlier judgment of this Court in ***Mphasis Limited*** (supra). It is also contended that the judgment of the Hon'ble Supreme Court in ***SBP & Co. vs. Patel Engineering Ltd. and Anr.*** reported in ***(2005) 8 SCC 618*** was rendered prior to the amendment to Section 11 of the Act. Subsequent to the

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said amendment, the Hon'ble Supreme Court, in the case of ***Duro Felguera S.A. v. Gangavaram Port Limited*** reported in ***(2017) 9 SCC 729***, has explained the limited scope of examination by the Court under Section 11(6-A) of the Act and distinguished the earlier position of law laid down in ***SBP & Co.*** (supra). Hence, she sought for allowing the petition.

7. Heard the learned counsel for the parties. Perused the petition papers.

8. It is not in dispute that the parties have entered into a Service Agreement dated 11.11.2022. Under the said agreement, there is an arbitration Clause 5. The said arbitration clause reads as under:

> *"5. GOVERNING LAW, JURISDICTION AND ALTERNATE DISPUTE RESOLUTION*
>
> *i Any dispute or difference between the PARTIES with regard to this SERVICE AGREEMENT and all connected and related matters whatsoever shall be discussed and settled amicably.*

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ii In the event of failure to resolve the disputes or differences amicably, all such disputes or differences whatsoever shall be referred to arbitration to be conducted in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996 or any statutory modification or enactment thereof. The seat and venue of arbitration shall be Bangalore. The arbitration proceedings shall be conducted by 1 (one) arbitrator, jointly appointed by the Parties.

iii This SERVICE AGREEMENT and the right and obligations of the PARTIES arising out of this SERVICE AGREEMENT shall be construed and enforced in accordance with the laws of India and subject to Clause 5 i and 5 ii above courts in (.) shall have the jurisdiction with respect to any disputes arising under this Agreement."

9. A perusal of the first clause of the arbitration clause would indicate that, in respect of any dispute arising between the parties, they are required to first discuss and endeavour to settle the dispute amicably.

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10. In the present case, the petitioner has filed a memo enclosing the email communications exchanged between the parties. From the said correspondence, it is evident that there were discussions between the parties in respect of payment of service charges on different dates. It also appears that the respondent had made certain offers for settlement, which were not accepted by the petitioner. Therefore, the correspondence placed on record clearly demonstrates that the parties had, in fact, made an attempt to resolve the dispute amicably, but the same did not succeed.

11. However, this Court, in similar circumstances, in the judgment reported in ***Mphasis Limited*** (supra), has held that the pre-condition contained in the arbitration clause requiring the parties to make an attempt to settle the dispute amicably is directory and not a mandatory requirement. The relevant paragraph No.10 of the said judgment reads as under:

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*"**10.** The provisions of the Act were amended by Act No. 3 of 2016 which came into force with effect from 23.10.2015. Sub-section (6A) was added to section 11 of the Act which provides that the Supreme Court or as the case may be, the High Court, while considering an application under sub-section (4) or sub-section (5) or sub-section (6) shall, notwithstanding any Judgment, decree or order of any Court, confine to the examination of existence of an arbitration agreement. Admittedly, in the instant case, the agreement dated 15.07.2016 executed between the parties contains an arbitration clause, viz., clause No. 5. The respondent can raise all his objections before the arbitrator under Section 16 of the Act which need not be examined in this summary proceedings. So far as submission of the respondent that this petition is premature is concerned, suffice it to say that in the notice dated 25.01.2018, the petitioner has clearly stated that the petitioner has been following up with the respondent to perform its obligation under the agreement. However, despite lapse of 60 days, no action was taken and therefore, the petitioner is forced to invoke the arbitration clause. In the reply dated 12.02.2018, the aforesaid averment of fact has not been specifically denied and it has been merely stated that notice has been issued without exhausting alternative remedy. Besides that,*

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Delhi High court in the case of RAVINDRAKUMAR VERMA supra, has held that even if the requirement as stated for invoking the arbitration is not complied with, the same cannot prevent reference to the arbitration because the procedure/precondition has to be taken as directory and not a mandatory requirement. I am in respectful agreement with the aforesaid view. Therefore, the objection raised by the respondent that this proceeding is premature cannot be sustained."

12. The judgment relied upon by the respondent is the one reported in the case of ***Sobha Limited*** (supra). In the said judgment, the Co-ordinate Bench of this Court, following the judgment of the Hon'ble Supreme Court in ***SBP & Co.*** (supra), has held that the pre-condition contained in the arbitration clause requiring the parties to settle the dispute amicably is mandatory.

13. However, the judgment of the Hon'ble Supreme Court in ***SBP & Co.*** (supra) was rendered prior to the amendment to Section 11 of the Act. Subsequent to the said amendment, the Hon'ble Supreme Court, in the case of ***Duro Felguera S.A.*** (supra), has considered the effect

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of the amendment and distinguished the judgment in ***SBP & Co.*** (supra).

14. Therefore, considering the aforesaid judgments and having regard to the existence of the arbitration clause contained in the Service Agreement, which provides for resolution of disputes arising between the parties, and the fact that the petitioner has duly invoked the said arbitration clause by issuing notice under Section 21 of the Act, this Court is of the opinion that a Sole Arbitrator is required to be appointed for adjudication of the disputes between the parties.

15. Accordingly, the following:

ORDER

a) Civil Miscellaneous Petition is **allowed**.

b) Hon'ble Mr.Justice P.Krishna Bhat, Former Judge, High Court of Karnataka is appointed as the Sole Arbitrator in the present case to arbitrate the disputes between the parties at the Arbitration and Conciliation Centre

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(Domestic & International), Bengaluru, as per the Rules governing the said Arbitration Centre.

c) All the claims and contentions of the parties are left open.

d) Registry is directed to communicate this order via e-mail to the Arbitration and Conciliation Centre (Domestic & International), Khanija Bhavan, Bengaluru, and also to Hon'ble Mr.Justice P.Krishna Bhat, Former Judge, High Court of Karnataka.

e) Registry is directed to return all the original documents produced by any of the parties after obtaining Photostat copies of the same.

f) Parties are directed to appear before the Director, Arbitration and Conciliation Centre, Bengaluru, on **30.11.2026** at 11:30 a.m.

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(H.T. NARENDRA PRASAD)
JUDGE

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LIST NO.: 1 SL NO.: 17