HC-KAR
NC: 2026:KHC:61543
CMP No. 706 of 2022
CNR: KAHC010375232022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF NOVEMBER, 2026

BEFORE

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

CIVIL MISC. PETITION NO. 706 OF 2022

BETWEEN:

M/S BEML EMPLOYEES COOPERATIVE SOCIETY LTD
C/O BEML LTD, BANGALORE COMPLEX
NEW THIPPASANDRA POST
BANGALORE-560075
REP. BY ITS PRESIDENT
SRI D M NAGESH.

…PETITIONER

(BY SRI. SHREEDHARA B E., ADVOCATE)

AND:

1. M/S SKYTOP BUILDERS PVT LTD
   NO.175, 6TH CROSS
   GANDHINAGAR, BANGALORE-560009
   REP. BY ITS MANAGING DIRECTOR
   SRI B L NAGENDRA PRASAD.

2. SRI B L NAGENDRA PRASAD
   MANAGING DIRECTOR OF
   M/S SKYTOP BUILDERS PVT LTD
   NO.175, 6TH CROSS
   GANDHINAGAR, BANGALORE-560009

…RESPONDENTS

(BY SRI. SADASHIVAIAH K G., ADVOCATE FOR R1 & R2)

THIS CIVIL MISC. PETITION IS UNDER SECTION 11(5) OF THE ARBITRATION AND CONCILIATION ACT 1996, PRAYING PASS AN APPROPRIATE ORDER APPOINTING THE ARBITRATOR AND TO RESOLVE THE DISPUTE, WHICH HAS ARISEN BY

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VIRTUE OF THE MODIFIED AGREEMENT DATED: 04/06/2009 ENTERED INTO BETWEEN THE PETITIONER SOCIETY AND THE RESPONDENTS AS PER ANNEXURE-C AND ETC.

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(6) 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 Modified Agreement dated 04.06.2009, particularly in terms of Arbitration Clause thereof, produced at Annexure-C.

2. The brief facts of the case are that petitioner Society is a registered Co-operative Society under the provisions of the Karnataka Co-Operative Societies Act, 1959. Respondent No.1 is a Land Developer and worked as an Agent on behalf of the petitioner for procuring the lands for formation of layout and distribution of sites to its members. Respondent No.2 is a Managing Director of

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respondent No.1. Thereafter, parties entered into an Agreement dated 30.08.2002 (Annexure-B). Subsequently, in the year 2009, the respondent approached the petitioner seeking enhancement of rate of payment due to various reasons. Accordingly, the parties entered into a Modified Agreement dated 04.06.2009 (Annexure-C). Subsequently, disputes arose between the parties in relation to the said Modified Agreement.

3. Upon disputes having arisen between the parties, the respondents approached this Court in CMP No.121/2014 seeking appointment of an Arbitrator. This Court, by order dated 21.04.2016, allowed the petition and appointed a Sole Arbitrator to resolve the disputes between the parties. Pursuant thereto, the learned Arbitrator passed an award dated 07.11.2017. Aggrieved by the said award, the petitioner filed Com.A.S.No.32/2018 under Section 34 of the Act before the Additional City Civil and Sessions Judge, Bengaluru. By judgment dated 28.02.2022,

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Com.A.S.No.32/2018 came to be allowed by setting aside the award, reserving liberty to the petitioner-Society to commence the arbitration proceedings afresh, if so desired. Challenging the said judgment, the respondents preferred Commercial Appeal No.91/2026 before this Court. This Court, by order dated 13.07.2026, dismissed the appeal.

4. In pursuance of the liberty reserved in Com.A.S.No.32/2018, the petitioner, invoking the arbitration clause contained in the Modified Agreement, issued a notice dated 30.06.2022 under Section 21 of the Act to the respondents, vide Annexure-M. The said arbitration clause reads as under:

> *"In case of any disputes, the parties herein have agreed to appoint Arbitrator as mutually agreed to settle amicably as per the Indian Arbitration Act or any of its modification thereof"*

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5. Despite service of the said notice, the respondents failed to furnish any response. Hence, the present petition is filed seeking appointment of a sole Arbitrator.

6. The learned counsel appearing for the respondents submit that the petitioner had already approached this Court in the earlier round of litigation and, therefore, in view of the same, the present petition is not maintainable.

7. The said contention cannot be accepted. In the earlier proceedings, the arbitral award was set aside by the Trial Court, while expressly reserving liberty to the petitioner-Society to commence arbitration proceedings afresh, if so desired. The said judgment has also been upheld by this Court in Commercial Appeal No.91/2026. Therefore, the present proceedings are not barred merely on the ground that because the petitioner had invoked the arbitration clause on an earlier occasion. In view of the liberty so reserved, the petitioner is justified in invoking the arbitration clause afresh and seeking appointment of

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an Arbitrator. Accordingly, the objection raised by the respondents regarding maintainability of the petition is liable to be rejected.

8. Having regard to the existence of the arbitration clause contained in the 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.

9. Accordingly, the following:

ORDER

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

b) Hon'ble Mr.Justice Ajit J Gunjal, 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 (Domestic &

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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 Ajit J Gunjal.

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 **16.12.2026** at 11:30 a.m.

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(H.T. NARENDRA PRASAD)
JUDGE

DM
LIST NO.: 1 SL NO.: 26