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

Date of decision: 13th JANUARY, 2026

IN THE MATTER OF:

+ **ARB.P. 1345/2025**

SDC-1 BUILDING ASSOCIATION

.....Petitioner

Through: Mr. Mukesh Kumar, Ms. Meenakshi Sood, Ms. Muskan Katyayan and Mr. Karan Chhibber, Advocates

versus

MR. PAWAN J PURI

.....Respondent

Through: Mr. Mohan Kumar, Ms. Neetu Singh and Mr. Vishesh Tyagi, Advs.

+ **ARB.P. 1346/2025**

SDC-1 BUILDING ASSOCIATION

.....Petitioner

Through: Mr. Mukesh Kumar, Ms. Meenakshi Sood, Ms. Muskan Katyayan and Mr. Karan Chhibber, Advocates

versus

MR. RAMAN MALIK

.....Respondent

Through: *Appearance not given.*

+ **ARB.P. 1351/2025**

SDC- I BUILDING ASSOCIATION

.....Petitioner

Through: Mr. Mukesh Kumar, Ms. Meenakshi Sood, Ms. Muskan Katyayan and Mr. Karan Chhibber, Advocates

versus



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MR. CHAITANYA PALIT

.....Respondent

Through: Mr. Arsh and Mr. Sanjay Sharma,
Advs.

+ **ARB.P. 1352/2025**

SDC-1 BUILDING ASSOCIATION

.....Petitioner

Through: Mr. Mukesh Kumar, Ms. Meenakshi
Sood, Ms. Muskan Katyayan and Mr.
Karan Chhibber, Advocates

versus

MRS. UMA MALIK

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present batch of Petitions has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Arbitration Act'*) for appointment of the Arbitrator to adjudicate on the disputes which have arisen between the parties under various Maintenance Agreements.
2. The Petitioner herein, which is a Society registered under the Societies Registration Act, 1860 and the Delhi Apartment Ownership Act, 1984 is concerned with the maintaining the common areas and services in Som Dutt Chamber-1, Bhikaji Cama Place, Delhi- 110066 (*hereinafter*



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referred to as '*the Building*'). The Respondent in each of the Petition is the flat owner in the Building. For the sake of convenience, each of the flat owner in the Petitions tagged shall be collectively referred to as Respondents as the batch of Petitions are being disposed of by way of a common judgment.

3. The facts of the case reveal that the Respondents entered into Maintenance Agreements with M/s Bhikaji Maintenance Combine (*hereinafter referred to as 'the BMC'*), whereby the Respondents agreed to pay the maintenance charges for the proper maintenance of Common Areas of the Building, including its security, running/maintenance of lifts, power back up, housekeeping as well as for the operation of common services etc.

4. The Respondent in ARB.P.1345/2025 signed the Maintenance Agreement on 22.05.1986, Respondent in ARB.P.1346/2025 signed the Maintenance Agreement on 31.08.1990, Respondent in ARB.P.1351/2025 signed the Maintenance Agreement on 01.06.1987 and Respondent in ARB.P.1352/2025 signed the Maintenance Agreement on 26.04.1997.

5. Clause 11 of the said Agreements contains an Arbitration Clause.

6. It is stated that the Petitioner/Society was involved in coordinating with the builder being SDB Infrastructure Private Limited (*hereinafter referred as 'the Builder'*) and the flat owner/allotees, i.e., the Respondents herein for the smooth functioning and maintenance of the common areas and services of the Building.

7. It is stated that the Builder filed a Writ Petition being W.P(C) 684/2002 before this Court challenging an Order passed by the Delhi Development Authority (*hereinafter referred as 'the DDA'*) directing the Builder to hand-over the possession of Plot No.5, District Centre, Bhikaji



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Cama Place, New Delhi, with the superstructure standing thereon to the DDA. The said Writ Petition was disposed of by this Court *vide* Order dated 29.09.2016 with the following directions:

“22. I therefore dispose of this petition with the following directions:-

(i) The petitioner to within two months hereof deposit with the respondent DDA all amounts by way of ground rent or otherwise collected by it from the owners/occupiers of flats/spaces in the aforesaid building and the respondent DDA to accept the same.

(ii) The petitioner to at the time of making the aforesaid deposit also file an affidavit with the respondent DDA to the effect that it is not holding any amount whether by way of ground rent or otherwise collected from the owners/occupiers of flats/spaces in the aforesaid building and the petitioner is restrained from hereafter collecting any amount towards ground rent or otherwise from the owners/occupiers of flats/spaces in the aforesaid building.

(iii) The respondent DDA to within two months hereof carry out a detailed survey of the building aforesaid and to have prepared detailed drawings of the building including of each floor of the building, identifying by measurement the flats/spaces therein and the name and other particulars of the persons who are claiming to own the same.

(iv) The petitioner to within two months aforesaid file another affidavit with the respondent DDA giving the names and particulars of the persons who as per the record of the petitioner are the purchasers/owners of different flats/spaces in the aforesaid multi-storied building.



(v) *The respondent DDA to thereafter, in accordance with the prevalent Rules & Regulations, Bye-laws assess which parts of the building are unauthorised or in misuse and whether such unauthorised construction/misuse can be regularized/condoned and if so on what terms and to intimate the owner of such flats/spaces having unauthorised construction or the misuse, of the same and to thereafter take action in accordance with law with respect thereto.*

(vi) *The person/s affected by the action aforesaid of the respondent DDA shall have their remedies in law against the petitioner as well as against the respondent DDA.*

(vii) *The respondent DDA to thereafter also apportion its dues with respect to the aforesaid building and/or construction thereon amongst the different flats/spaces as per area thereof and to raise a demand on the owners of individual flats/spaces and if they fail to pay the same to resume such space/flat and to deal with the same as may be deemed fit by the respondent DDA.*

(viii) *The concerned competent authority under the Apartment Act of the respondent DDA to also initiate steps in conjunction with the owners of flats/spaces in the aforesaid building to form an Association of Apartment Owners within the meaning of the Apartment Act aforesaid to take over the maintenance of common areas and services in the building and the petitioner is directed to do the needful in that regard.*

(ix) *The respondent DDA to in accordance with O.S. Bajpai supra also initiate steps for execution of deed of apartments in favour of the purchasers of flats/spaces in the aforesaid building who have paid all their dues to the respondent DDA and the petitioner is directed to co-operate in all respects in that regard."*



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(emphasis supplied)

8. It is stated that pursuant to the above directions of this Court, the Petitioner herein started negotiating with the Builder for finalizing the terms and conditions of the handover agreement. It is stated that upon finalization of the terms and conditions, an Agreement and a Deed of Assignment dated 12.07.2024 was executed between the Builder, the BMC and the Petitioner herein wherein the right to maintain the common areas and services and collect the maintenance charges from the flat owners of the Building, including the past and future charges, was handed over to the Petitioner Society herein w.e.f 01.04.2024.

9. It is stated that the flat owners/Respondents of the Building were informed about the Agreement dated 12.07.2024. It is stated demand notices were sent by the Petitioner/Society to the defaulting flat owners/Respondents seeking payment of the outstanding charges. It is stated that when the outstanding charges were not paid by the Respondents, the Petitioner herein sent a Notice under Section 21 of the Arbitration Act in accordance with Clause 11 of the Maintenance Agreement which was entered into between the Respondents and the BMC. Since the Respondents failed to reply to the said Notice, the Petitioner has approached this Court by filing the present Petitions.

10. Notice in the present Petitions was issued on 02.09.2025 and time was granted to the Respondents to file replies. Even though replies have been filed, however, as per the office noting, the same still are lying under objection and have not been brought on record. Be that as it may, this Court shall proceed to adjudicate upon the Petitions in light of the rival contentions



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advanced by the learned Counsels for the parties.

11. Learned Counsel appearing for the Petitioner places reliance on Clause 11 of the Maintenance Agreement which was entered into by the Respondents, in their individual capacity, with the BMC. Relevant Clauses of the Maintenance Agreement reads as under:

“ **AGREEMENT**

*Articles of Agreement made at New Delhi this 22nd day of May 1985/86 between M/s. Bhikaiji Maintenance Combine, having its office at Som Datt Chambers-1, 5-Bhikaiji Cama Place, New Delhi-110 065 (hereinafter called B.M.C. which expression, unless be repugnant to its context or **meaning thereof shall include its successors and assigns**) of the ONE PART and M/S. Sunehri Lal Tej Prakash (P) Ltd. and individual (s)/HUF/Partnership Firm/Company (hereinafter referred to as the Buyer' which expression shall, unless it be repugnant to its context or meaning thereof, be deemed to include his/her/their legal heirs, assigns, legal representatives) of the OTHER PART.*

Whereas the Buyer has entered into an Agreement with M/s. Som Datt Builders (P) Ltd., having its Registered Office at 8 Acharya Jagdish Ch. Bose Road, Calcutta-700017 and Administrative Office at 56. Community Centre, East of Kailash, New Delhi-110065 (hereinafter referred to as the Promoter') under which the Buyer has agreed to buy flat/Shop/Store No. UG-05 B on UG Floor hereinafter referred to as "the Flat in the building named "Som Datt Chambers-1' built on Plot No. 5, Bhikaiji Cama Place, New Delhi under the terms and conditions set out in the said Agreement.

And Whereas under clause 18 of the said Agreement the Promoter has appointed M/s. Bhikaiji Maintenance



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Combine as its nominee service agents and has entrusted to them, on a permanent basis, the work of the preservation, maintenance and upkeep of the aforesaid Building, operation of common services therein, supply of Water and also maintenance of common spaces, lifts, fire fighting equipments etc, to which the Buyer has agreed and has also agreed to execute and sign a separate Agreement with the said B.M.C. containing the terms and conditions and obligations under which B.M.C. will provide and render their services.

And Whereas in pursuance of the said Agreement this Agreement is being entered into between the Buyer and B.M.C. on the terms and conditions set forth herein.

11. Both parties to this Agreement namely, the Buyer and the B.M.C. agree and bind themselves that in the event of any dispute relating or connected with (howsoever remote) this Agreement or in respect of the non-payment of bills or interest due or interpretation of any clause of this Agreement, the same shall be referred to the Promoter or Its nominee for arbitration whose decision will be binding on both the parties and shall be carried out by them as the final adjudication of the said dispute.”

(emphasis supplied)

12. In accordance with the Judgment passed by this Court in W.P(C) 684/2002, the Petitioner herein entered into an Agreement with the Builder and the BMC under which the right to claim maintenance from the flat owners/Respondents has been assigned to the Petitioner. Relying upon the same, learned Counsel for the Petitioner submits that there exists a valid arbitration agreement between the Petitioner and Respondents.



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13. *Per contra*, learned Counsel for the Respondents contends that there is no valid Arbitration Agreement between the Petitioner and the Respondents as the Respondents have not entered into any agreement with the Petitioner neither for the purpose of maintenance charges nor for any other obligation. He, therefore, states that none of the ingredients of Section 7 of the Arbitration Act are made out and, therefore, the present Petition is not maintainable.

14. Heard the learned Counsels for the parties and perused the material on record.

15. The facts of the case reveal that the Respondents entered into a Maintenance Agreement with the BMC, which includes the successors and assigns of BMC. The BMC, Builder and Petitioner herein, later entered into an Agreement and Deed of Assignment dated 12.07.2024.

16. At this stage, it is pertinent to reproduce Section 7 of the Arbitration Act which reads as under:

“Section 7. Arbitration agreement.

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in



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- (a) a document signed by the parties;*
- (b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or*
- (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.*

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

17. This Court is of the *prima facie* opinion that since the Petitioner is an assignee of BMC and the Maintenance Agreement entered into between the Respondents and the BMC contained an Arbitration Clause wherein the Respondents submitted themselves to arbitration, there is a valid and existing Arbitration Agreement between the Petitioner and the Respondents.

18. The Apex Court in Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1, has observed as under:-

“165. The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term “examination” in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of “existence” of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , this Court held that the



*Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. **Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] in the context of Section 8 and Section 11 of the Arbitration Act.***

166.** The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. **The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.



167. Section 11(6-A) uses the expression “examination of the existence of an arbitration agreement”. **The purport of using the word “examination” connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression “examination” does not connote or imply a laborious or contested inquiry.** [P. Ramanatha Aiyar, *The Law Lexicon* (2nd Edn., 1997) 666.] **On the other hand, Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.* [*Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*, (2005) 7 SCC 234]”**

(emphasis supplied)

19. Similarly, the Apex Court in SBI General Insurance Co. Ltd. v. Krish Spinning, **2024 SCC OnLine SC 1754**, has observed as under:-

“122. Once an arbitration agreement exists between parties, then the option of approaching the civil court becomes unavailable to them. In such a scenario, if the parties seek to raise a dispute, they necessarily have to do so before the arbitral tribunal. The arbitral tribunal, in turn, can only be constituted as per the procedure agreed upon between the parties. However, if there is a failure of the agreed upon procedure, then the duty of appointing the arbitral tribunal falls upon the referral court under Section 11 of the Act, 1996. If



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the referral court, at this stage, goes beyond the scope of enquiry as provided under the section and examines the issue of “accord and satisfaction”, then it would amount to usurpation of the power which the parties had intended to be exercisable by the arbitral tribunal alone and not by the national courts. Such a scenario would impeach arbitral autonomy and would not fit well with the scheme of the Act, 1996.

125. We are also of the view that ex-facie frivolity and dishonesty in litigation is an aspect which the arbitral tribunal is equally, if not more, capable to decide upon the appreciation of the evidence adduced by the parties. We say so because the arbitral tribunal has the benefit of going through all the relevant evidence and pleadings in much more detail than the referral court. If the referral court is able to see the frivolity in the litigation on the basis of bare minimum pleadings, then it would be incorrect to doubt that the arbitral tribunal would not be able to arrive at the same inference, most likely in the first few hearings itself, with the benefit of extensive pleadings and evidentiary material.”

20. Since it is well-settled legal position that referral courts must normally follow the policy of ‘when in doubt, refer’ and since disputes have undoubtedly arisen between the parties, this Court is inclined to appoint an Arbitrator to adjudicate upon the disputes between the parties.

21. Accordingly, Ms. Mehak Nakra, Advocate (Mob. No: 987114582) is appointed as the Sole Arbitrator to adjudicate upon the disputes between the parties.

22. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and



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regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

23. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within two weeks of entering on reference.

24. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

25. It is made clear that nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

26. It is further made clear that the observations made in this Order are squarely limited to the appointment of an Arbitrator. Needless to state, it is open for the Respondents to urge its contention regarding arbitrability, jurisdiction etc. before the learned Arbitrator.

27. The petitions stand disposed of in the above terms, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 13, 2026

Rahul