



2026:DHC:660



\$~

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

Judgment reserved on: 12.01.2026
Judgment pronounced on: 28.01.2026

+ ARB.P. 1880/2025

DHARAMPAL SATYAPAL LIMITEDPetitioner

Through: Mr. Saket Sikri, Mr. Nikhil Kohli, Mr. Ishan Gaur, Mr. Sameer Rohatgi, Mr. Kushank Garg, Mr. Akshaya Ganpath and Ms. Saumya Tiwari, Advocates.

versus

NICHE BUILDERS AND CONTRACTORS PRIVATE LIMITEDRespondent

Through: Mr. Arvind Nayar, Senior Advocate along with Ms. Neeha Nagpal, Mr. Malak Bhatt and Mr. Nikunj Mahajan, Advocates.

+ O.M.P.(I) (COMM.) 383/2025 & I.A. 612/2026 (Seeking vacation of stay)

DHARAMPAL SATYAPAL LIMITEDPetitioner

Through: Mr. Saket Sikri, Mr. Nikhil Kohli, Mr. Ishan Gaur, Mr. Sameer Rohatgi, Mr. Kushank Garg, Mr. Akshaya Ganpath and Ms. Saumya Tiwari, Advocates.

versus

NICHE BUILDERS AND CONTRACTORS PVT LTD

.....Respondent

Through: Mr. Arvind Nayar, Senior

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 30.01.2026
18:09:32

ARB.P. 1880/2025 and connected matter

Page 1 of 18



2026:DHC:660



Advocate along with Ms. Neeha Nagpal, Mr. Malak Bhatt and Mr. Nikunj Mahajan, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The Petition, being **ARB.P. 1880/2025¹**, has been filed under Section 11(6) of the **Arbitration and Conciliation Act, 1996²**, seeking the appointment of an arbitrator to adjudicate the disputes that have arisen *inter se* the parties, arising out of the **Agreement to Sell dated 07.12.2019³**.

2. The Petition, being **O.M.P.(I) (COMM.) 383/2025⁴**, has been filed under Section 9 of the Act seeking the following reliefs:-

- “(i) Restrain the Respondent, its representatives, attorneys, heirs, executors, administrators, successors and permitted assigns etc. from directly or indirectly, selling, transferring, alienating or creating any third party rights in any manner whatsoever with respect to the commercial property consisting of Amalgamated Units No. 4 & 5, admeasuring 2022 sq. ft. (built-up area) on the Ground Floor, A-Wing of Gundecha Heights, situated at L.B.S Marg, Kanjur Marg (West), Mumbai-400078, which is a subject matter of the Agreement to Sell dated 07.12.2019;
- (ii) Direct the Respondent, its representatives, attorneys, heirs, executors, administrators, successors and permitted assigns, to jointly and severally maintain status quo as to the possession and title of the commercial property consisting of Amalgamated Units No. 4 & 5, admeasuring 2022 sq. ft. (built-up area) on the Ground Floor, A-Wing of Gundecha

¹ Section 11 Petition

² Act

³ ATS

⁴ Section 9 Petition

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 30.01.2026
18:09:32

ARB.P. 1880/2025 and connected matter

Page 2 of 18



2026:DHC:660



Heights, situated at L.B.S Marg, Kanjur Marg (West), Mumbai-400078, during the pendency of the proposed Arbitration proceedings;

- (iii) Pass *ex parte ad interim* orders in terms of prayers (i) to (ii) above;
- (iv) Pass any such other or further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. With the consent of the parties, both matters were taken up for hearing together and accordingly shall be disposed of by way of this common Judgement.

4. Further, for the sake of clarity, convenience and brevity, unless otherwise mentioned, the Petitioner in both the Petitions, being '*Dharampal Satyapal Limited*', shall be hereinafter referred to as "***Petitioner***" and the Respondent in both the Petitions, being '*Niche Builders And Contractors Pvt Ltd*', shall be hereinafter referred to as "***Respondent***".

5. Shorn of unnecessary details, the facts germane to the institution of and as stated in the present Petitions are as follows:-

- i. The parties herein entered into an ATS for the **commercial property consisting of Amalgamated Unit Nos. 4 and 5, admeasuring 2022 sq. ft. (built-up area) on the Ground Floor, A-Wing of Gundecha Heights, situated at L.B.S Marg, Kanjur Marg (West), Mumbai - 40008, bearing CTS No. 607B/1/A of Village Kanjur⁵.**
- ii. It is stated in the Petitions that by way of the ATS, the Respondent agreed to sell, convey, transfer and assign the Demised Property to the Petitioner, free from all

⁵ Demised Property



2026:DHC:660



encumbrances, along with the ownership rights, for a total consideration of Rs. 8,00,00,000/- (Rupees Eight Crores Only).

- iii. It is further stated in the Petitions that the ATS was indeterminable as there existed no termination clause, and accordingly, the ATS creates indefeasible rights in favour of the Petitioner.
- iv. The Petitions further state that, as agreed between the parties, the Petitioner had paid an amount of Rs. 4,00,00,000/- (Rupees Four Crores Only) on the date of execution of the ATS, i.e., 07.12.2019 and thereafter paid an amount of Rs. 1,00,00,00/- (Rupees One Crore Only) to the Respondent on 02.09.2020.
- v. It is stated that, in terms of the ATS, more specifically Clause 2(b) thereof, the payment of the balance consideration was to be paid by the Petitioner within 12 months from the date when the Respondent handed over the vacant physical possession of the Demised Premises to the Petitioner. Clause 2(b) of the ATS reads as under:

“2(b) the payment of the balance sale consideration of Rs. 4,00,00,000/- (Four Crores Only, will be paid by the VENDEE to the VENDOR within 12 months from the date, when the vacant physical possession of the entire SAID PROPERTY will be delivered by the VENDOR to the VENDEE and also all the deeds and documents as may be required by the VENDEE for the conveyance, transfer and sale of the SAID PROPERTY will also be executed and registered by the VENDOR in the favour of the VENDEE or its nominee.”
- vi. In view thereof, it is stated that the Respondent failed to perform its part of the obligations as set out in the ATS, i.e., failed to deliver the vacant physical possession of the Demised



2026:DHC:660



Property to the Petitioner, which is the nucleus of the dispute that has arisen *inter se* the parties.

vii. Thereafter, it is stated that it came to the knowledge of the Petitioner that the Respondent is trying to create third-party interests in the Demised Property, despite the subsistence of the ATS, which is stated to be in breach of Clause 8 of the ATS, which reads as under:

“8. That pending completion of the sale, the VENDOR shall not enter into any agreement of sale in respect of the SAID PROPERTY or any part thereof nor the VENDOR will in any manner create any charge, mortgage, and or deal with the SAID PROPERTY in any manner or enter into any arrangement in respect of the SAID PROPERTY .”

viii. Accordingly, to preserve the subject matter, being the Demised Property, the Petitioner preferred the Section 9 Petition. Consequently, *vide* **Order dated 17.09.2025⁶**, this Court directed *status quo* with respect to the Demised Property till the next date of hearing, which has been continued since the passing of the said *status quo* Order.

ix. Material on record indicates that, in view of the afore-stated disputes that had arisen between the parties, the Petitioner invoked arbitration *vide* Notice dated 22.09.2025 in terms of Section 21 of the Act read with Clause 12 of the ATS, which is the Arbitration Clause as envisaged in the ATS. Clause 12 of the ATS is reproduced herein below:

“12. That the parties had agreed to attempt in good faith to resolve any disputes/differences or claim arising out of or in relation to this Agreement through mutual discussion. In case it is not resolved within 30 days from the date of receipt of the written notice (setting out dispute or claim), by the other party, the complaining party may issue a notice

⁶ Status quo Order



2026:DHC:660



of reference, invoking settlement of such dispute through sole arbitration, to be mutually appointed by the parties. Any dispute relating to construction, managing, scope, operation or effect of this Agreement or the validity or the breach thereof be referred to and finally and conclusively settled by mutually appointed sole arbitrator, in accordance with law in effect in India governing the arbitration. The place of arbitration shall be at New Delhi.”

- x. Since no response to the notice invoking arbitration was forthcoming on behalf of the Respondent, the Petitioner preferred the Section 11 Petition before this Court, seeking the appointment of a learned Sole Arbitrator for the adjudication of the disputes *inter se* the parties.
- xi. It would be appropriate to mention that the captioned matters were listed before this Court on 08.01.2026. On that date, the learned Senior Counsel for the Respondent sought to make oral submissions seeking the vacation of the *status quo* Order.
- xii. At that juncture, this Court was of the view that given the fact that on that particular date, there was no formal Application on record for the purpose of seeking a vacation of the *status quo* Order and also keeping in view the fact that the various issues, as sought to be raised, could well be taken up by the learned Arbitrator and appropriate decision would be rendered on the same by the learned Arbitrator, the matter was adjourned to 12.01.2026.
- xiii. Though the matter was adjourned only for the purpose of enabling the learned counsel for the Respondent to seek instructions, it would appear that the Respondent has, quite obviously, to overcome the observation made by this Court that there was no application on record, managed to ensure that



2026:DHC:660



such an Application seeking the vacation of the stay of the *status quo* Order came to be a part of the Court's record, by way of filing, by the next date of hearing, being the date when the matter came to be reserved for Judgment.

xiv. However, during the oral submissions, learned Senior Counsel for the Respondent, on instructions, very fairly stated that the said Application may be ignored and that only the objections as raised on 08.01.2026, which he sought to reiterate herein and which are articulated in the subsequent paragraphs, may be considered.

SUBMISSIONS ON BEHALF OF THE PARTIES:

6. At the outset, the learned Senior Counsel for the Respondent would seek to raise objections to the present Section 11 Petition on the ground that the same is barred by limitation by stating that the Agreement itself is of the year 2019 and in which part performance was done, firstly in the year 2019, when an amount of Rs. 4 Crores came to be paid and thereafter the last amounts in pursuance of the said Agreement came to be paid in the year 2020, which is a payment of a sum of Rs. 1 Crore.

7. In view of the aforesaid, he would submit that there is a belated invocation of the Arbitration Clause envisaged in the Agreement insofar as the actual performance of the terms of the Agreement as per the clause as set out therein should have been in the year 2020 itself.

8. Learned Senior Counsel would further submit that the acknowledgement letter dated 31.03.2023, alleged to have been issued by the Respondent, confirming the receipt of Rs. 5,00,00,000/- (Rupees Five Crores Only), which has been relied upon by the



2026:DHC:660



Petitioner, is an unsigned letter, without the company seal and is a false and fabricated document. He would, thus, submit that the said letter, which has been pressed into service for the purpose of calculating the period of limitation, is *ex facie* false and fabricated, and therefore, the present Petition is clearly barred by limitation.

9. To further buttress the argument that the Petition under Section 11 of the Act is barred by limitation, he would contend that the Notice invoking arbitration, which is dated 22.09.2025, is also clearly belated.

10. Learned Senior Counsel for the Respondent would further submit that, in terms of the Arbitration Clause in the ATS, there has been non-compliance with the mandatory pre-arbitral steps insofar as there has been no attempt in good faith to resolve any of the disputes or differences through mutual discussions. He would refer to and rely upon the Judgment of the Hon'ble Supreme Court in ***Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd.***⁷ particularly on paragraphs 28 and 29, and upon the Judgments of this Court in ***Welspun Enterprises Ltd. v. NCC Ltd.***⁸ (paragraph nos. 14-16) and ***Triveni Pattern Glass Ltd. v. Triveni Glass Ltd. & Ors.***⁹ (paragraph nos. 11-15).

11. He would further submit that the present Agreement, being an Agreement to Sell, is not enforceable. He would submit that the same does not confer any right or title upon the Petitioner herein. The learned Senior Counsel for the Respondent would rely upon the Judgement of the Hon'ble Supreme Court in ***Suraj Lamp &***

⁷ (2020) 14 SCC 643

⁸ 2018 SCC OnLine Del 12693

⁹ 2025:DHC:6266



2026:DHC:660



*Industries (P) Ltd. (2) v. State of Haryana*¹⁰, wherein the Apex Court held that an agreement to sell does not convey title, nor does it create any property interest in an immovable property.

12. He would submit that even assuming the ATS was capable of enforcement, time was of the essence, and the conduct of the Petitioner herein does not justify the invocation of the Arbitration Clause at such a belated stage.

13. He would further submit that the Petitioner had clearly failed to display his readiness and willingness to go ahead with the terms of the Agreement since there has been complete silence from the year 2020 (assuming the acknowledgement letter dated 31.03.2023 was invalid).

14. Learned Senior Counsel for the Respondent would, on the strength of his arguments, submit that apart from the fact that the present Petition is barred by limitation, even equity would be against the grant of any relief.

15. He would further submit that the ATS only contemplates that in the event the Agreement were to become incapable of performance, the only consequence would be to refund the advance amount. He would submit that as a result thereof, there is no compulsion to convey any interest in the Demised Premises and, as a result, any Arbitral Tribunal that were to be constituted could not legitimately grant the relief as sought by the Petitioner, in view of Clause 11 of the ATS, read with the delay.

16. He would thus submit that the present Petition is in respect of claims that fall within the definition of ‘non-arbitrable disputes’, and would justify the refusal of the reference to Arbitration. To buttress

¹⁰ (2012) 1 SCC 656



2026:DHC:660



his argument, he would seek to rely upon the Judgement of the Hon'ble Supreme Court in *Vidya Drolia v. Durga Trading Corpn*¹¹.

17. He would further contend that the Arbitration Clause contained in the ATS, which has been reproduced herein above, is not a Clause that is definitive in conveying the parties' intent to have the disputes referred to Arbitration.

18. He would then seek to draw support from the judgment of the Hon'ble Supreme Court in the judgments in the case of *BGM & M-RPL-JMCT (JV) v. Eastern Coalfields Ltd.*¹², and in particular paragraph 31 thereof, to contend that the usage of the word "may" in the present Agreement cannot be construed to be only restricted to the Notice for reference and would have to be necessarily read as being incorporated in the subsequent part of the said Clause, meaning thereby that since the invocation of any Arbitration can only be read by way of Notice, the use of the word "may" in respect of the issuance of the Notice would also have to be read into the part of the Clause and would therefore evidence that the resort to the resolution of disputes through the mode of Arbitration was optional and same would not constitute a valid Arbitration Agreement.

19. He would also refer to and rely upon the Judgement of the Apex Court in *Jagdish Chander v. Ramesh Chander*¹³, Judgement of the Madhya Pradesh High Court in *Trbex Impex (P) Ltd. v. Ashok Fine Spun*¹⁴, and in the Judgement of the Madras High Court in *M. Arumugam v. CP Foods*¹⁵.

¹¹ (2021) 2 SCC 1

¹² 2025 SCC OnLine SC 1471

¹³ (2007) 5 SCC 719

¹⁴ 2024 SCC OnLine MP 2936

¹⁵ 2025 SCC OnLine Mad 7114



2026:DHC:660



20. Learned Senior Counsel for the Respondent would contend that the invocation of the Arbitration Clause was premature, since the ATS clearly provides for a pre-arbitration requirement of seeking to resolve disputes through mutual discussions and which procedure has not yet been complied with.

21. **Per contra**, learned counsel for the Petitioner would submit that the scope of enquiry under a petition filed under Section 11 of the Act is extremely limited. He would rely upon the Judgment of the Hon'ble Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spg.***¹⁶, to contend that at the stage of Section 11, the Court is required to examine only the *prima facie* existence of an Arbitration Agreement.

22. He would further contend that in the present case, and as is apparent, there has been an attempt to try and resolve the disputes as between the parties; however, there has been no positive step taken by the Respondent for the same. He would thus submit that the present Section 11 Petition is not premature and is well within time, and as per the terms and conditions of the ATS as between the parties.

23. He would further submit that the pre-arbitral procedures that are stated to have not been complied with are only directory in nature and not mandatory. Learned counsel for the Petitioner would refer to and rely upon the Judgement of the Co-ordinate Bench in ***Sri Ganesh Engineering Works v. Northern Railway***¹⁷, particularly paragraphs 16, 17, 20 and 21 thereof. He would also rely upon another Judgement of a Co-ordinate Bench in ***N.J. Garments (P) Ltd. v. Capitalgram Marketing & Technology (P) Ltd.***¹⁸, and in particular paragraphs 9,

¹⁶ (2024) 12 SCC 1

¹⁷ 2024 SCC OnLine Del 8985

¹⁸ 2024 SCC OnLine Del 5474



2026:DHC:660



10 and 11 thereof, to support his contention.

24. He would further submit that the challenge to the Arbitration clause not being valid in view of the use of the word “may” has not been placed in pleadings and is only a result of the ingenuity of the learned Senior Counsel appearing on behalf of the Respondent, and for this reason, the same should not be considered.

25. He would also contend that the question as to whether the claims themselves or the very invocation of the Arbitration is belated and barred by limitation is a mixed question of law and facts and the same would fall within the purview of the learned Arbitrator.

ANALYSIS:

26. This Court has heard the learned counsel for the parties and, with their able assistance, perused the material on record.

27. This Court is of the view that, when disputes arise between the parties and when Arbitration is provided as a means to resolve the same, primacy should be given to the intent of the parties to have the said disputes resolved by way of resort to the alternate dispute resolution mechanism of Arbitration.

28. The various contentions that are sought to be raised by the learned counsel for the Respondent as against the invocation of the Arbitration are questions that can also be raised before the learned Arbitrator, and which can be decided as preliminary issues in the line of Section 16 of the Act.

29. As is apparent, assuming on a demurrer that the invocation of the Arbitration Clause was to be held to be premature, the same would only result in the kicking of the proverbial can down the road for a further period of 30 days.



2026:DHC:660



30. The Section 9 Petition has been hanging fire before this Court since September 2025, and the Section 11 Petition came to be filed in the month of November 2025. During this period, the various petitions filed by the Petitioner herein have been vigorously opposed by the learned Senior Counsel for the Respondent, exhibiting therein a clear adversarial stand. In light of the same, the technical objection sought to be taken by the Respondent as respects the necessity for ensuring strict compliance with the provisions of the Arbitration Clause and entering into mutual talks prior to the invocation of the Arbitration itself, seems to be highly impractical and would not really resolve any issues as between the parties. In any event, and as has been held in various Judgments, such pre-arbitral conciliatory measures or measures that involve discussions between parties prior to invoking arbitration are clauses that are directory in nature and not mandatory in nature.

31. The various issues raised by the learned Senior Counsel for the Respondent and especially those relating to the delay in invocation of Arbitration proceedings and the alleged invalid and fabricated letter of acknowledgement dated 31.03.2023, are all issues which are clearly factual in nature and which are more properly in the domain of a learned Arbitrator who can look into all these aspects and take an informed decision while exercising his jurisdiction.

32. The scope of jurisdiction under Section 11 of the Act, as is already noticed, lays severe restrictions on the remit of the Courts and the scope is highly circumscribed to only considering a few factors which have been laid down by the Hon'ble Supreme Court in ***Krish Spinning*** (*supra*). The relevant extract of ***Krish Spinning*** (*supra*) reads as under:-

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 30.11.2026
18:09:32

ARB.P. 1880/2025 and connected matter

Page 13 of 18



2026:DHC:660



“113. 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.

114. The use of the term “examination” under Section 11(6-A) as distinguished from the use of the term “rule” under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to “rule” under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.

115. The aforesaid approach serves a twofold purpose — firstly, it allows the Referral Court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence of the arbitration agreement in depth.

116. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899*, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] 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: (SCC p. 104, para 220)

“220. 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 [Ed.: The words between two asterisks have been emphasised in original as well.] not other issues [Ed.: The words between two asterisks have been emphasised in original as well.]”*. *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 time-bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators.”

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 30.01.2026
18:09:32

ARB.P. 1880/2025 and connected matter

Page 14 of 18



2026:DHC:660



117. In view of the observations made by this Court in *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re* [*Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re*, (2024) 6 SCC 1 : 2023 INSC 1066] , 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* [*Vidya Drolia v. Durga Trading Corpn.*, (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and adopted in *NTPC Ltd. v. SPML Infra Ltd.* [*NTPC Ltd. v. SPML Infra Ltd.*, (2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342] 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 *Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re* [*Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re*, (2024) 6 SCC 1 : 2023 INSC 1066] .”

(emphasis supplied)

33. The further argument of the learned Senior Counsel for the Respondent with respect to the construction and interpretation of the Arbitration Clause, in this Court’s view, is misconceived.

34. There is a clear difference between the Clauses in the **BGM & M-RPL-JMCT (JV)** (*supra*) and the present case. In the present case, a perusal of the Arbitration Clause would clearly evidence that though the word “may” has been used in the earlier part of the Arbitration Clause, it appears to be limited to the notice of reference invoking Settlement. That said, and as rightly contended by the learned counsel for the Respondent, certainly there can be no arbitration proceedings initiated without the issuance of a Notice under Section 21 of the Act.

35. However, in the present case, as the Arbitration Clause reads, in addition to the initial part of the Clause where the word “may” has been used and which pertains to notice of reference, the subsequent part of the Arbitration Clause would lay to rest any apprehensions

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 30/01/2026
18:09:32

ARB.P. 1880/2025 and connected matter

Page 15 of 18



2026:DHC:660



with respect to the mode that was to be adopted for the purpose of settling the disputes as between the parties. There is a clear reference therein to the resolution of the disputes by resort to Arbitration.

36. As already observed hereinabove, and in order to ensure that the use of the word “may” and the various other arguments are not sought to be canvassed at this stage, this Court has not gone into the merits of the contentions raised by the parties. It is clarified that the arguments raised by the Respondent include, *inter alia*, issues relating to the nature of the Agreement itself, particularly whether time was of the essence thereof, the Petitioner's apparent lack of readiness and willingness to perform its obligations, as well as the objection arising from Clause 11 of the ATS, which allegedly provides only for refund of the advance amount. All such grounds are left open to be urged by the Respondent before the learned Arbitrator.

CONCLUSION:

ARB.P. 1880/2025

37. In view of the aforesaid facts and circumstances, and the settled position of law, this Court is of the opinion that the present matter deserves to be referred to Arbitration.

38. Material on record indicates that the disputed amount in the present matter is approximately Rs. 5,00,00,000/- (Rs. Five Crores Only).

39. In view thereof, this Court requests **Hon'ble Ms. Justice Shalinder Kaur (Retd.)** to enter into the reference as the learned Arbitrator to adjudicate the disputes *inter se* the parties.



2026:DHC:660



40. The learned sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12(2) of the Act.

41. The learned sole Arbitrator shall be entitled to fees in accordance with the Fourth Schedule of the Act or as may otherwise be agreed to between the parties and the learned sole Arbitrator.

42. The parties shall share the learned sole Arbitrator's fee and arbitral costs equally.

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

44. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy. All rights and contentions of the parties in this regard are reserved.

45. Let a copy of the said order be sent to the learned sole Arbitrator through the electronic mode as well.

46. Accordingly, the present Petition, along with pending application(s), is allowed and disposed of in the aforesaid terms.

O.M.P.(I) (COMM.) 383/2025

47. In view of the reference of disputes to Arbitration, this petition filed under Section 9 of the Act will be treated as an application under Section 17 of the Act, which now shall be considered by the learned Arbitrator, after entering reference, in accordance with law.

48. Needless to say, till the time the Section 17 Application is considered by the learned Arbitrator, the *status quo* Order granted by this Court shall continue.

49. It is made clear that this Court is not making any suggestion or

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 30.01.2026
18:09:32

ARB.P. 1880/2025 and connected matter

Page 17 of 18



2026:DHC:660



passing any direction with respect to the mode and manner in which the learned Arbitrator needs to conduct the proceedings.

50. In view thereof, the present Petition, along with pending applications, if any, shall stand disposed of in the aforesaid terms.

51. No orders as to cost.

HARISH VAIDYANATHAN SHANKAR, J.
JANUARY 28, 2026/nd/va

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 30.01.2026
18:09:32

ARB.P. 1880/2025 and connected matter

Page 18 of 18