IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD
CORAM:
*** HON'BLE SRI JUSTICE K. LAKSHMAN**

\+ ARBITRATION APPLICATION No.41 OF 2023

% Delivered on: 09-06-2025

Between:
Urbanwoods Realitty LLP .. Applicant

Vs.

$ Mrs. Uma Rastogi (died) and another .. Respondents

! For Applicant : Mr. Sunil B.Ganu,Ld.Sr.Counsel
Rep. Mrs.Manjari S.Ganu,
Ld.Counsel

For RespondentNo.2 : Mr. Avinash Desai, Ld.Sr.Counsel
Rep. Mr.Vadeendra Joshi, Ld.Counsel
for 2nd respondent.

Gist :
> Head Note :
? Cases Referred :

1. (2020) 3 SCC 169.
2. (1974) 1 SCC 141.
3. AIR 1959 SC 1362.
4. (2013) 10 SCC 535.
5. 2020 SCC OnLine TS 3393.
6. (2000) 4 SCC 272.
7. (2019) SCC OnLine TS 3565.
8. (2009) SCC OnLine AP 202.
9. Order dated 15.03.2024 in A.A. No. 132 of 2023 passed by the High Court for the State of Telangana.
10. (2024) 6 SCC 1.
11. 2024 SCC OnLine SC 1754.
12. (1999) 5 SCC 651

HON'BLE SRI JUSTICE K. LAKSHMAN

ARBITRATION APPLICATION NO. 41 OF 2023

ORDER:

The present Arbitration Application is filed under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act, 1996') seeking appointment of a sole arbitrator.

2. Heard Mr. Sunil B. Ganu, learned senior counsel representing Mrs. Manjari S. Ganu, learned counsel for the Applicant and Mr. Avinash Desai, learned senior counsel representing Mr. Vadeendra Joshi, learned counsel for 2nd Respondent.

3. The Applicant is a developer. The Respondents are the owners of land admeasuring Ac. 2.00 Gts. in Sy. Nos. 9 and 10 situated at Khajaguda Village, Serlingampally Mandal, Rangareddy District (hereinafter 'subject land'). The parties herein had entered into a Memorandum of Understanding (hereinafter 'MoU') dated 01.07.2020. The said MoU was for joint development of the subject land as a real estate project.

4. Under the terms of the MoU, the subject land was to be developed within a period of 48 months and a mutual extension of 12

months was permissible. The Respondents, under the MoU were entitled to 2,10,000 sq. feet of constructed area. Further, the Respondents were to receive Rs. 10 crores as refundable security deposit. Out of the said Rs. 10 crores, Rs. 1 crore was to be paid on the date of the MoU and remaining Rs. 9 crore on or before execution of a development agreement within 30 days of the MoU. The said MoU imposed certain obligations on both the parties. The MoU stated that the Respondents shall provide the relevant title documents and execute 'transaction documents' including agreement of sales before 10.07.2020. Likewise, it was provided that the Applicant, in addition to paying the refundable security deposit, shall also execute 'transaction documents'.

5. Thereafter, an agreement of sale dated 01.07.2020 was executed whereby the Respondents agreed to sell the subject land for a sale consideration of Rs. 80 crores. The said agreement stated that out of the total sale consideration of Rs. 80 crores, the Applicant shall pay Rs. 2 crore on the date of the MoU, Rs. 18 crores within thirty (30) days of the agreement, and the remaining Rs. 60 crores within six (06) months from the date of the agreement which can be further extended by three (03) months.

6. The Applicant claims that the proposed development project required several approvals, permissions, and NOCs which would require significant time. Therefore, according to the Applicant, the parties agreed that the timelines mentioned in the MoU will not be strictly adhered to.

7. The Applicant contends that all the efforts to obtain the relevant approvals were being made. Further, the Applicant claims that it had paid a total of Rs. 13,52,80,000/- as on 01.01.2023. According to the Applicant, despite all its efforts, it had learnt that the Respondents were trying to enter into development agreements with third parties. Therefore, they filed an application under Section 9 of the Act, 1996. The said application was allowed *vide* order dated 19.08.2024 and a temporary injunction restraining the Respondents from alienating the subject property or creating encumbrances was granted.

8. Thereafter, an arbitration notice dated 10.01.2023 invoking the following clauses in the MoU dated 01.07.2020 and the agreement of sale dated 01.07.2020:

> **Clause in Memorandum of Understanding dt 1-7-2020 on page 5 reads as under:-**

> "In case of any conflict with the terms of this Binding Term Sheet shall be mutually resolved through a jointly appointed Arbitrator, whose resolution judgment shall be final and binding between the parties."
>
> **The Arbitration Clause in Agreement of Sale dated 1-7-2020 being Clause No.11 reads as under:-**
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> "In case of any dispute, the matter may be referred to Sole Arbitrator to be appointed by Both parties with mutual consent and such Arbitration proceedings will be held in English at Hyderabad."

9. The Respondents replied to the above notice *vide* a reply notice dated 13.01.2023. They stated that the MoU and the agreement of sale stood terminated due to efflux of time and non-payment of the agreed sale consideration. The Respondents also agreed to refund the monies received by them. They relied that upon an Indemnity Bond dated 13.09.2022 whereby the parties agreed that the MoU stood terminated due to efflux of time. The relevant portion of the said Indemnity Bond is extracted below:

> "AND WHEREAS both the parties hereto have decided and agreed to enter into a Development Agreement cum GPA in respect of the above said property on fresh terms and conditions since the MOU dated 01.07.2020 has already been terminated by

efflux of lime and which has been extended by the parties by mutual consent;"

10. Reiterating what they had stated in the reply notice, the Respondentscontended that as the MoU and the agreement of sale stood terminated due to efflux of time, the arbitration clause also stood terminated. Therefore, according to them, the arbitration clause under the said agreements could not have been invoked. They relied on **WAPCOS Ltd. v. Salma Dam Joint Venture**[1], **Damodar Valley Corporation v. K.K. Kar**[2], **Union of India v. Kishori Lal Gupta**[3], **Young Achievers v. IMS Learning Resources Pvt. Ltd.**[4], and **M.B.S Impex Private Ltd. v. Mineral and Metals Trading Corporation**[5].

11. The Respondents also raised an objection regarding the insufficient stamping of the MoU and the agreement of sale dated 01.07.2020. According to them, as these agreements are improperly stamped, the arbitration clause cannot be enforced.

12. For the first time in their written submissions, the Respondents contended that there is no definite arbitration agreement in the agreement of sale as the word used in the clause is 'may'.

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[1](2020) 3 SCC 169.
[2](1974) 1 SCC 141.
[3]AIR 1959 SC 1362.
[4] (2013) 10 SCC 535.
[5]2020 SCC OnLine TS 3393.

Reliance was placed on **Wellington Associates Ltd. v. Kirit Mehta**[6], **Inspace Projects v. Fly Dubai**[7], **GajullapalliChenchu Reddy v. Koyyana Jaya Lakshmi**[8], and **Amara Raja Infra Pvt. Ltd. v. Raidian Institution of Technology**[9].

13. Firstly, this Court would like to address the issue regarding insufficient stamping of the agreements. A 07-Judge Bench of the Supreme Court in **Interplay Between Arbitration Agreements under Arbitration, 1996 & Stamp Act, 1899, In re**[10], has held that the issue of insufficient stamping cannot be gone into by the referral court under Section 11. The issue of stamping shall be left for the arbitral tribunal to decide. The relevant paragraphs are extracted below:

> **229. The discussion in preceding segments indicates that the Referral Court at Section 11 stage should not examine or impound an unstamped or insufficiently stamped instrument, but rather leave it for the determination by the Arbitral Tribunal.** When a party produces an arbitration agreement or its certified copy, the Referral

[6](2000) 4 SCC 272.
[7](2019) SCC OnLine TS 3565.
[8] (2009) SCC OnLine AP 202.
[9]Order dated 15.03.2024 in A.A. No. 132 of 2023 passed by the High Court for the State of Telangana.
[10](2024) 6 SCC 1.

Court only has to examine whether an arbitration agreement exists in terms of Section 7 of the Arbitration Act. The Referral Court under Section 11 is not required to examine whether a certified copy of the agreement/instrument/contract discloses the fact of payment of stamp duty on the original. Accordingly, we hold that the holding of this Court in *SMS Tea Estates* [*SMS Tea Estates (P) Ltd.* v. *Chandmari Tea Co. (P) Ltd.*, (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777] , as reiterated in *N.N. Global (2)* [*N.N. Global Mercantile (P) Ltd.* v. *Indo Unique Flame Ltd.*, (2023) 7 SCC 1 : (2023) 3 SCC (Civ) 564] , is no longer valid in law.

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M. *Conclusions*

235. The conclusions reached in this judgment are summarised below:

235.1. Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;

235.2. Non-stamping or inadequate stamping is a curable defect;

235.3. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The Court concerned must examine whether the arbitration agreement prima facie exists;

> **235.4. Any objections in relation to the stamping of the agreement fall within the ambit of the Arbitral Tribunal; and**
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> **235.5.** The decision in *N.N. Global (2)* [*N.N. Global Mercantile (P) Ltd.* v. *Indo Unique Flame Ltd.*, (2023) 7 SCC 1 : (2023) 3 SCC (Civ) 564] and *SMS Tea Estates* [*SMS Tea Estates (P) Ltd.* v. *Chandmari Tea Co. (P) Ltd.*, (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777] are overruled. Paras 22 and 29 of *Garware Wall Ropes* [*Garware Wall Ropes Ltd.*v. *Coastal Marine Constructions &Engg. Ltd.*, (2019) 9 SCC 209 : (2019) 4 SCC (Civ) 324] are overruled to that extent.

Therefore, the objection regarding insufficient stamping raised by the Respondents cannot be accepted.

14. The next issue i.e., whether the MoU and the agreement of sale stood terminated by the efflux of time and consequently whether the arbitration agreement also terminates has to be decided against the Respondents. It is trite law that an arbitration clause is a separate agreement in itself. The termination of the substantive contract will not automatically terminate the arbitration agreement. The issue whether the agreement stood terminated or not is still a dispute which can be adjudicated by the arbitral tribunal. In this regard, reference

may be made to the following paragraphs in **SBI General Insurance Co. Ltd. v. Krish Spinning**[11]:

> **48. Arbitration for the purpose of resolving any dispute pertaining to any claim which has been "fully and finally settled" between the parties can only be invoked if the arbitration agreement survives even after the discharge of the substantive contract.**
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> **49.** The arbitration agreement, by virtue of the presumption of separability, survives the principal contract in which it was contained. Section 16(1) of the Act, 1996 which is based on Article 16 of the UNCITRAL Model Law on International Commercial Arbitration, 1985 (hereinafter, "**Model Law**") embodies the presumption of separability. There are two aspects to the doctrine of separability as contained in the Act, 1996:—
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> **i.** An arbitration clause forming part of a contract is treated as an agreement independent of the other terms of the contract.
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> **ii.** A decision by the arbitral tribunal declaring the contract as null and void does not, *ipso facto*, make the arbitration clause invalid.
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> **50. The doctrine of separability was not part of the legislative scheme under the Arbitration Act,**

[11] 2024 SCC OnLine SC 1754.

> **1940. However, with the enactment of the Act, 1996, the doctrine was expressly incorporated. This Court in *National Agricultural Coop. Marketing Federation India Ltd.* v. *Gains Trading Ltd.* reported in (2007) 5 SCC 692, while interpreting Section 16 of the Act, 1996, held that even if the underlying contract comes to an end, the arbitration agreement contained in such a contract survives for the purpose of resolution of disputes between the parties.**
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> **51. The fundamental premise governing the doctrine of separability is that the arbitration agreement is incorporated by the parties to a contract with the mutual intention to settle any disputes that may arise under or in respect of or with regard to the underlying substantive contract, and thus by its inherent nature is independent of the substantive contract.**

15. At this stage, it is relevant to note that the scope of inquiry under Section 11 of the Act, 1996 is limited. The referral court only has to see whether a *prima facie* arbitration agreement exists. The issues whether the agreement stood terminated and consequently, whether the arbitration clause stood terminated is a question to be decided by the arbitral tribunal. In **Krish Spinning (supra)**, a 03-Judge Bench of the Supreme Court exhaustively discussed the

evolution of the law on Section 11 of the Act, 1996. It concluded that the Courts while deciding an application to appoint an arbitrator cannot go into the issues of non-arbitrability or termination of the agreement. The only test is to see whether a *prima facie* arbitration agreement exists. The relevant paragraphs are extracted below:

> **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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> **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.

119. Appointment of an arbitral tribunal at the stage of Section 11 petition also does not mean that the referral courts forego any scope of judicial review of the adjudication done by the arbitral tribunal. The Act, 1996 clearly vests the national courts with the power of subsequent review by which the award passed by an arbitrator may be subjected to challenge by any of the parties to the arbitration.

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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.

16. Therefore, this Court holds that*prima facie,*an arbitration agreement exists between the parties. The issue of termination of the MoU and the agreement of sale by efflux of time cannot be decided by this Court and is left open for the arbitrator to decide. Further, the effect and interpretation of the Indemnity Bond dated 13.01.2023 is also open for the parties to raise before the arbitral tribunal.

17. At this stage, this Court, would like to address the submission of the Respondents regarding the usage of the word 'may' in the arbitration clause of the agreement to sale. Where intention to arbitrate is unclear and where there is no definite arbitration clause, the parties cannot be referred to the arbitral process. However, where the intention to arbitrate is clear, the courts are duty bound to enforce such an intention. In the present case, the intention to arbitrate is quite clear when both the MoU and the agreement of sale dated 01.07.2020 are read together. In fact, this Court holds that they are supposed to be read together. Both the agreements were entered into for the same purpose of development of a real estate project. Further, the subject land in both the agreements is the same. It can also be seen that the agreement of sale refers to the MoU and stipulates that part of the sale consideration (Rs. 2 crore) had to be paid on the date of the MoU.

Both the agreements form part of the same transaction. Therefore, in case of interconnected agreements, where the mother agreement clearly and unequivocally refers the disputes to arbitration, mere use of 'may' in the arbitration clause of one of the ancillary agreements will not defeat the intention to arbitrate.

18. In this regard, it is relevant to note that the Supreme Court in **Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan**[12], held that where interconnected agreements are involved and the clauses in the agreements are distinct, the courts shall follow the clause in the main agreement. In the present case, the MoU is the main agreement and the agreement of sale is an ancillary agreement. The same forms part of the 'transaction documents' to be executed under the MoU. The relevant paragraph of **Olympus (supra)** is extracted below:

> **30.** If there is a situation where there are disputes and differences in connection with the main agreement and also disputes in regard to "other matters" "*connected*" with the subject-matter of the main agreement then in such a situation, in our view, we are governed by the general arbitration clause 39 of the main agreement under which disputes under the main agreement and

[12](1999) 5 SCC 651

disputes connected therewith can be referred to the same arbitral tribunal. This clause 39 no doubt does not refer to any named arbitrators. So far as clause 5 of the Interior Design Agreement is concerned, it refers to disputes and differences arising from that agreement which can be referred to named arbitrators and the said clause 5, in our opinion, comes into play only in a situation where there are no disputes and differences in relation to the main agreement and the disputes and differences are solely confined to the Interior Design Agreement. That, in our view, is the true intention of the parties and that is the only way by which the general arbitration provision in clause 39 of the main agreement and the arbitration provision for a named arbitrator contained in clause 5 of the Interior Design Agreement can be harmonised or reconciled. **Therefore, in a case like the present where the disputes and differences cover the main agreement as well as the Interior Design Agreement, — (that there are disputes arising under the main agreement and the Interior Design Agreement is not in dispute) — it is the general arbitration clause 39 in the main agreement that governs because the questions arise also in regard to disputes relating to the overlapping items in the schedule to the main agreement and the Interior Design Agreement, as detailed earlier.** There cannot be conflicting awards in regard to items which overlap in the two agreements. Such a situation was never

contemplated by the parties. The intention of the parties when they incorporated clause 39 in the main agreement and clause 5 in the Interior Design Agreement was that the former clause was to apply to situations when there were disputes arising under both agreements and the latter was to apply to a situation where there were no disputes or differences arising under the main contract but the disputes and differences were confined only to the Interior Design Agreement. A case containing two agreements with arbitration clauses arose before this Court in *Agarwal Engg. Co.* v. *Technoimpex Hungarian Machine Industries Foreign Trade Co.* [(1977) 4 SCC 367 : AIR 1977 SC 2122] There were arbitration clauses in two contracts, one for sale of two machines to the appellant and the other appointing the appellant as sales representative. On the facts of the case, it was held that both the clauses operated separately and this conclusion was based on the specific clause in the sale contract that it was the "sole repository" of the sale transaction of the two machines. Krishna Iyer, J. held that if that were so, then there was no jurisdiction for travelling beyond the sale contract. The language of the other agreement appointing the appellant as sales representative was prospective and related to a sales agency and "later purchases", other than the purchases of these two machines. There was therefore no overlapping. The case before us and the above case exemplify contrary situations. In one case the disputes

are connected and in the other they are distinct and not connected. Thus, in the present case, clause 39 of the main agreement applies. Points 1 and 2 are decided accordingly in favour of the respondents.

19. In light of the aforesaid discussion, this Court holds that a valid arbitration agreement exists between the parties.

20. In result, the present arbitration application is allowed. **Sri Justice V. V. S. Rao, Former Judge of the erstwhile High Court of Andhra Pradesh**, appointed as the sole arbitrator to adjudicate the claims of the parties. The parties are at liberty to raise all the issues before the arbitral tribunal.

As a sequel thereto, miscellaneous applications, if any, pending in the Arbitration Application shall stand closed.

K. LAKSHMAN, J

Date:09th June,2025

Note: L.R.Copy to be marked.
B/o. Vvr.