



2026:DHC:8717



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CNR No. DLHC010319812026

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ARB.P. 1204/2026 & I.A. 19119/2026

M/S. SHANTI DEVELOPERS

.....Petitioner

Through: Mr. Sameer Dawar, Mr.
Vishwam Mishra and Mr.
Vaibhav Garg, Advocates.

versus

VIRENDER KUMAR

.....Respondent

Through: Mr. Abhijat, Sr. Advocate with
Mr. Sumit Chander, Mr.
Gurdeep Chanha, Ms. Sonakshi
Chaturvedi and Mr.
Harshvardhan, Advocates.

CORAM:**HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****JUDGMENT(ORAL)**

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29.09.2026

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996¹ seeking appointment of a Sole Arbitrator to adjudicate the dispute arising out of the Collaboration Agreement dated 20.10.2021 and the Special Power of Attorney² dated 09.11.2021.

2. It emerges from the facts of the present case that the Respondent is the absolute owner of Plot No. E-96, admeasuring 180 Sq. Yards, situated at Saket, New Delhi and the petitioner is a builder/developer. On 20.10.2021, Petitioner and Respondent entered into a Collaboration Agreement for the demolition of the existing structure and construction of a new building comprising Basement, Stilt, Ground, First, Second,

¹ "Act" hereinafter

² "SPA" hereinafter



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and Third Floors at the Petitioner's cost. In consideration for the construction work, the Petitioner was allocated exclusive entitlement over the First Floor along with a 1/4th share in the stilt parking/land, while the remainder of the property was retained by the Respondent.

3. Pursuant to Clause 10 of the Collaboration Agreement, the Respondent executed an SPA dated 09.11.2021 in favour of the Petitioner. The SPA granted limited agency to enable the Petitioner to obtain municipal sanctions, deal with administrative authorities, and negotiate/execute agreements to sell relating to the Respondent's share in the new building. Clause 19 of the SPA incorporates a dispute resolution mechanism contemplating the appointment of an arbitrator by mutual consent.

4. The Petitioner asserts that despite various acts and omissions on the part of the Respondent causing project delays, the Petitioner completed the construction at its own expense. Disputes thereafter arose between the parties regarding the *inter-se* settlement of accounts. Consequently, the parties executed a Memorandum of Understanding³ dated 05.03.2024, wherein it was agreed that the Petitioner's outstanding dues would be liquidated through the sale of the Ground Floor. Apparently, it seems that the Ground Floor could not be sold, and the Respondent allegedly continued to default on its settlement obligations.

5. Thereafter, an Agreement to Sell dated 06.03.2024 for the First Floor was executed between the Respondent and an intending

Signature Not Verified³ "MoU" hereinafter

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purchaser, Mrs. Revati Joshi, for a consideration of Rs 1,35,00,000/-. A Registered Sale Deed for the First Floor was subsequently executed in favour of Mrs. Revati Joshi on 28.03.2024 for the same consideration.

6. The Petitioner subsequently issued a Legal Notice dated 16.01.2026 invoking Clause 19 of the SPA dated 09.11.2021, calling upon the Respondent to pay the outstanding dues or concur in the appointment of a Sole Arbitrator. The Petitioner claims, *inter alia*, Rs.3,25,00,000/- towards balance outstanding amount, Rs.75,00,000/- towards damages and incidental expenses, along with interest and costs.

7. Learned Counsel for the Petitioner submits that the arbitration clause contained in Clause 19 of the SPA is directly applicable to the present dispute. It is submitted that the SPA is not a mere routine authorization, but a special instrument executed contemporaneously with, and in supplement to, the Collaboration Agreement. According to the Petitioner, the two instruments form a composite transaction, and therefore, the arbitration clause in the SPA must be read into the underlying Collaboration Agreement.

8. *Per Contra* learned Senior Counsel for the Respondent Mr. Abhijat, disputes the maintainability of the petition, contending that the primary Collaboration Agreement contains no arbitration clause and instead prescribes civil court litigation under Clause 27.

9. It is further submitted that the MoU dated 05.03.2024 operates as a novation of prior arrangements without an arbitration clause. According to the learned Senior Counsel, the issue stands addressed by



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the order dated 11.05.2026 in O.M.P.(I) (COMM.) 198/2026, and that the petition has been filed as a response to the pending proceedings under Section 138 of the Negotiable Instruments Act, 1881.

10. Consequently, it is submitted that there is no existence of the arbitration agreement between the parties, rendering the present petition not maintainable under the provisions of Act.

11. I have heard learned Counsel for both the parties and perused the material on records.

12. This Court is fully conscious that in a petition under Section 11 of the Act, its referral jurisdiction post the insertion of sub-section (6A) is circumscribed and limited strictly to examining the *prima facie* existence of an arbitration agreement between the parties. Thus, this Court must refrain from conducting a mini-trial on complex factual disputes and, as a rule of judicial prudence, whenever in doubt, the matter ought to be referred to arbitration.

13. The Supreme Court in ***Duro Felguera, S.A. v. Gangavaram Port Ltd.***⁴, held that under Section 11(6A), the Court's inquiry is confined to examining whether the agreement contains a clause providing for arbitration pertaining to the disputes that have arisen between the parties.

⁴ (2017) 9 SCC 729



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14. This narrow threshold was subsequently affirmed by the 7-Judge Constitution Bench *Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re*,⁵ and further reiterated in *SBI General Insurance Co. Ltd. v. Krish Spg*⁶.

15. This Court in *NCC Ltd. v. Indian Oil Corpn. Ltd*⁷, similarly affirmed that a fundamental component of this inquiry is determining whether the dispute at hand is relatable to the arbitration agreement. The relevant extract is reproduced as below:-

“107. In my view, the scope of examination as to whether or not the claims lodged are Notified Claims has narrowed down considerably in view of the language of Section 11(6A) of the 1996 Act. To my mind, once the Court is persuaded that it has jurisdiction to entertain a Section 11 petition all that it is required to examine, is, as to whether or not an arbitration agreement exists between the parties which is relatable to the dispute at hand. The latter part of the exercise adverted to above, which, involves correlating the dispute with the arbitration agreement obtaining between the parties, is an aspect which is implicitly embedded in Subsection (6A) of Section 11 of the 1996 Act, which, otherwise, requires the Court to confine its examination only to the existence of the arbitration agreement. Therefore, if on a bare perusal of the agreement, it is found that a particular dispute is not relatable to the arbitration agreement, then, perhaps, the Court may decline the relief sought for by a party in a Section 11 petition. However, if there is a contestation with regard to the issue as to whether the dispute falls within the realm of the arbitration agreement, then, the best course would be to allow the arbitrator to form a view in the matter.”

16. Applying this governing standard, the core question that falls for determination before this Court is whether there exists a valid and binding arbitration agreement between the parties that governs or relates to the present disputes.

⁵ (2024) 6 SCC 1

⁶ (2024) 12 SCC 1

⁷ 2019 SCC OnLine Del 6964



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17. It is thus necessary to analyse the delineation of substantive rights of the parties under the Collaboration Agreement versus the Ancillary Agency created under the SPA in the present case.

18. The substantive rights and contractual obligations between the parties originate exclusively from the Collaboration Agreement dated 20.10.2021. It is under this principal instrument that the Respondent handed over the suit property, the Petitioner covenanted to undertake construction at its own cost, and, in consideration thereof, the Petitioner was allocated entitlement over the First Floor along with its stipulated share in the land/stilt parking. Crucially, the Collaboration Agreement contains no arbitration clause. On the contrary, Clause 27 of the Collaboration Agreement explicitly provides as under:-

“27. That if the First Party backs out or default then the Second Party shall be fully entitled either to get this deal completed through court of law by a suit for specific performance of the contract at the tests and expenses of the First Party or to get refunded double the amount of earnest money plus construction cost till date from the First Party and if the Second Party backs out or default then the First Party shall be fully entitled either to get this deal completed through court of law by a suit for specific performance of the contract at the costs and expenses of the Second Party.”

19. On the other hand, the SPA dated 09.11.2021, which contains the arbitration clause relied upon by the Petitioner i.e. Clause 19, does not create or confer any substantive property entitlements upon the Petitioner. The SPA was executed pursuant to Clause 10 of the Collaboration Agreement for the limited purpose of authorizing the Petitioner to act as an agent on behalf of the Respondent to obtain



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municipal approvals, interact with civic authorities, and negotiate/execute transfer documents pertaining to the First Floor.

20. Thus, the SPA is purely an agency instrument facilitating the execution and implementation of the underlying commercial transaction already crystallized under the Collaboration Agreement. Notably, the purpose of the SPA stands fully exhausted, as it is an admitted fact that the sale of the First Floor to the third-party purchaser- Mrs. Revati Joshi, has been completed. The surviving disputes relate entirely to monetary claims and obligations arising under the Collaboration Agreement.

21. Consequently, the disputes raised herein bear no factual or legal relation to the arbitration clause contained in the SPA. Even if this Court accepts the facts as pleaded by the Petitioner concerning alleged delays in construction, interference during execution, changes in building plans, construction expenditure, and the non-payment of balance sale consideration all such claims stem directly from the substantive obligations governed by the Collaboration Agreement. Significantly, there is not even a whisper of an independent breach of the terms of the SPA in the entire petition.

22. Furthermore, Clause 27 of the Collaboration Agreement specifically prescribes that in the event of default, the non-defaulting party shall have recourse to a Suit for Specific Performance in a Court of Law or refund of double earnest money. The explicit provision for civil litigation in the principal agreement establishes beyond doubt that



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the parties never intended to refer disputes arising out of the Collaboration Agreement to arbitration.

23. The Petitioner contends that the SPA dated 09.11.2021 was executed contemporaneously with, and in supplement to, the Collaboration Agreement dated 20.10.2021 as part of a single, composite transaction. On this premise, it has been submitted that Clause 19 of the SPA must be read into the Collaboration Agreement to hold the present disputes arbitrable. To support this submission, reliance has been placed on *Ameet Lalchand Shah v. Rishabh Enterprises*⁸, *Bhasin Infotech & Infrastructure Pvt. Ltd. v. Ahmad Main*⁹, *Nishesh Ranjan v. Indiabulls Housing Finance Ltd.*¹⁰ and *Mahindra Mangilalji Jain v. Radha Construction Co*¹¹.

24. In the view of this Court, the aforesaid decisions relied upon by the Petitioner do not advance its case. In *Ameet Lalchand Shah* (supra), four interconnected agreements were executed for a single solar power project, where three agreements including the principal Equipment Lease Agreement contained arbitration clauses, leading the Supreme Court to refer the entire dispute across all four agreements to arbitration because the principal contract contained the dispute resolution clause. Similarly, in *Bhasin Infotech* (supra), applying the doctrine in *Mercury Travels (India) Ltd. & Others v. Shri Mahabir Prasad and Anr*¹², the contemporaneous documents were found to be inter-dependent and

⁸ (2018) 15 SCC 678

⁹ FAO(OS) (COMM) 205/2018

¹⁰ 2024 SCC OnLine Del 4662.

¹¹ 2026 SCC OnLine Bom 1640

¹² (2001) 89 DLT 440

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executed on the faith of one another as part of one single arrangement. In **Ritesh Ranjan** (supra), the Builder Buyer Agreement and Loan Agreement were integrally connected and mutually dependent upon each other for a common purpose. Similarly, in **Mahindra Mangilalji Jain** (supra), the arbitration clause was in the main contract i.e; the Retirement Deed that created the deal in the first place. In the present case, the main Collaboration contract, which contains the various rights and obligations of the contesting parties, admittedly doesn't have an arbitration clause at all, and it is only found in SPA only, which for its very existence is depends on clause 10 of the said Collaboration Agreement. One cannot use a side document to force an arbitration clause into a main contract that purposefully left it out.

25. The principles laid down in the cited precedents demonstrate that the composite transaction doctrine cannot be invoked merely because multiple documents were executed in relation to the same general transaction. The Court must evaluate the intrinsic nature of the respective contracts, their mutual interdependence, and whether the agreements are so inextricably linked that the composite performance of all is essential to give effect to the primary contractual objective.

26. The facts of the present case stand on an entirely different footing. The Collaboration Agreement is not dependent upon the SPA for its contractual existence or validity. As a matter of fact, it is actually the reverse. In as much as it is the Collaboration Agreement itself that creates and regulates the substantive rights and liabilities of the parties, including the Petitioner's entitlement to the First Floor and the consequences of default. While the SPA merely aids in the



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administrative execution of the Collaboration Agreement. The Collaboration Agreement is in no way dependent upon the SPA so as to justify importing an arbitration clause from an ancillary power of attorney, given for a specific & limited purpose, into a principal agreement that expressly provides a civil court remedy for default.

27. Further, this court cannot be oblivious to the fact that Section 7(5) of the Act specifically contemplates such incorporation. The same is reproduced here:-

“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—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication ¹¹[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.”

28. In ***NBCC (India) Ltd. v. Zillion Infraprojects (P) Ltd¹³***, relying upon its landmark decision in ***M.R. Engineers & Contractors (P) Ltd.***

¹³ (2024) 7 SCC 174



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v. *Som Datt Builders Ltd.*¹⁴, the Hon'ble Supreme Court held that for an arbitration clause from another document to be incorporated by reference, there must be a specific and conscious intention expressed in the principal contract to incorporate the arbitration clause itself, and the clause must not be repugnant to the explicit terms of the principal contract.

29. In the present case, the Collaboration Agreement contains no clause incorporating the terms or dispute resolution clause of the SPA. Attempting to read Clause 19 of the SPA into the Collaboration Agreement would not merely amount to reading two documents together but would forcefully introduce an arbitration mechanism into a principal contract where the parties consciously chose to stipulate civil court litigation under Clause 27.

30. Furthermore, the Petitioner's reliance on the SPA is contradicted by the nature of the reliefs sought. The principal claim of Rs.3,25,00,000/- towards alleged outstanding amount and Rs.75,00,000/- towards damages flows exclusively from the substantive entitlements under the Collaboration Agreement. A substantive monetary claim arising from the underlying collaboration cannot be converted into an arbitrable dispute under the SPA merely because the SPA authorized the Petitioner to negotiate and execute sale documents.

31. In view of the above, this Court is of the considered opinion that:

¹⁴ (2009) 7 SCC 696



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i. The principal Collaboration Agreement dated 20.10.2021 contains no arbitration agreement and explicitly provides for civil court litigation under Clause 27;

ii. The SPA dated 09.11.2021 is an ancillary instrument of agency whose administrative purpose stands exhausted; and

iii. The disputes raised by the Petitioner are not relatable to the arbitration clause contained in the SPA.

32. Consequently, there exists no *prima facie* arbitration agreement governing the disputes at hand.

33. The present petition under Section 11(6) of the Act is accordingly dismissed.

34. Pending applications, if any, stand disposed of. No order as to costs.

OM PRAKASH SHUKLA, J

SEPTEMBER 29, 2026/pa