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

Date of decision: 14.10.2025

% O.M.P. (COMM) 419/2025 & I.A. 25521/2025

M/S TIRUPATI BUILDING AND OFFICE PVT LTD .....Petitioner
Through:
versus

M/S CHAUHAN JEWELLERS PVT LTD .....Respondent
Through: Mr Gautam Swarup, Adv., Mr Ankur Das, Adv., Ms Sakshi Pandey, Adv., Mr Rudra Deoshthali, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

I.A. 25519/2025

Exemption is granted subject to all just exceptions.

The application is disposed of.

I.A. 25520/2025

Exemption is granted subject to all just exceptions.

The application is disposed of.

O.M.P. (COMM) 419/2025

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") seeking to challenge the Arbitral Award dated 26.05.2025 passed by the Sole Arbitrator in DIAC/ 4513D/ 07-22. titled as "*Chauhan Jewellers Pvt. Ltd. v. Tirupati Buildings and Office Pvt Ltd.".*

2. The facts are that the petitioner is a builder company which goes by the name of Tirupati Buildings and Office Pvt. Ltd. The petitioner company is registered under the Companies Act, 1956. The petitioner is also the owner of "Pinnacle Mall., situated in Dwarka, New Delhi.

3. The respondent is a Company is registered under the Companies Act, 1956. The respondent company is engaged in the business of retail of jewellery.

4. The petitioner was the owner of free-hold commercial property, bearing shop no. 3, measuring 670 sq. yards, situated on the Ground Floor of Pinnacle Mall (previously known as Welcome Mall), Dwarka, New Delhi - 110075 ("***property***")

5. The respondent purchased the said property from the petitioner, pursuant to which a builder-buyer agreement dated 02.06.2015 was executed between the parties and a registered Sale-Deed dated 18.08.2015 was executed by the petitioner with respect to the said property in the favour of the respondent.

6. As per the said Builder Buyer Agreement dated 02.06.2015, the petitioner was to appoint a Maintenance Company and facilitate a separate agreement with the respondent. Relevant paragraphs of the said Agreement dated 02.06.2015 reads as under:

> *"24. That the Buyer agrees that until such time, the maintenance and upkeep of the said Commercial Complex is ultimately handed over to some Association of the Owners of various units in the said Commercial Complex, the maintenance and provision of various services in the said Commercial Complex shall be done by a said Maintenance*

Company. The Buyer hereby gives necessary authority to the Builder for nominating Maintenance Company(s), from time to time, on its behalf for maintenance and upkeep of the such commercial Complex. The Buyer further agrees that the said maintenance Company(s) shall also have the option either to carry out the maintenance and upkeep work either on its own in the said Commercial Complex or further assign/subcontract the said work to any other Company(s). The Buyer further agrees to execute the Maintenance Agreement, the draft of which has already been read and understood by the Buyer, with the said Maintenance Company as and when called upon by the Builder.

"25. That the Buyer agrees that for the purposes of maintenance and upkeep of the said Commercial Complex, the Buyer shall pay necessary maintenance charges as may be determined by the said maintenance company. Non-payment of any of the charges within the time specified and for a ..., besides entailing penal interest shall also disentitle the Buyer to the enjoyment of common services in the said Commercial Complex and facilities being provided to the occupiers/visitors of the said Unit, The buyer further agrees to pay a non-refundable one-time Maintenance Security equivalent to three months maintenance charges that shall be refunded at the time of determination of the sale or shall be transferred, with updated amount security, in case the terms of the said unit. The said security shall also be used for adjustment or set off of

any outstanding against the maintenance dues and in the case of buyer failing to pay maintenance dues and in the case of buyer failing to pay maintenance charges for a continuous period of three months and also reimburse the complete amount of the maintenance security, the Builder shall be at liberty to re-enter the premises and/or to stop all the services to the unit till such time as the complete payments are made by the Buyer of the maintenance charges as well as the security amount."

7. However, no such agreement was executed. On 09.09.2016, WYN Ventures Pvt. Ltd. ("***WYN Ventures***") claiming to be the appointed Maintenance Company and raised a demand of Rs. 64,40,872/- for maintenance and AC charges from 01.04.2009 to 23.08.2016, including period prior to the respondent's ownership.

8. The respondent filed a Police Complaint dated 18.10.2016 on account of obstruction by the petitioner's security staff. Subsequently, on 20.02.2018, WYN Ventures threatened disconnection of essential services and restricted access due to non-payment or the disputed dues.

9. Since there were disputes between the parties, the petitioner unilaterally appointed an Arbitrator to adjudicate the disputes between the parties. The said Builder Buyer Agreement contained Clause No. 54 as the arbitration clause, which stipulated that any disputes arising between the parties shall be resolved through arbitration, to be conducted in Delhi, and further provided that the Arbitrator shall be appointed by the Builder, i.e. the petitioner. The respondent disputed the unilateral appointment of the Arbitrator and subsequently the Arbitrator terminated its own mandate in the

light of *Perkins Eastman Architects DPC v. HSCC (India) Ltd., 2019 SCC OnLine SC 1517.*

10. The respondent thereafter filed a petition under Section 11 of the 1996 Act seeking appointment of an Arbitrator. This Court appointed the Arbitrator and arbitration proceedings commenced wherein the respondent made claims for business losses, mental harassment and cost of legal proceedings. Correspondingly, the petitioner also filed a counter-claim stating that the respondent is in arrears of payment of maintenance charges as well as air conditioning charges. The petitioner herein was the respondent and the respondent herein was the claimant before the Arbitrator.

11. The Arbitrator *vide* impugned Award dated 26.05.2025 was pleased to reject the claims of the respondent as well as the counter-claims of the petitioner. Hence, the present petition challenging the dismissal of counter-claims of the petitioner.

12. Mr. Sharma, learned counsel for the petitioner states that the Award is biased, one-sided and incomplete. He further states that the respondent cannot be permitted to take benefit of its own faults as it is the respondent who has failed to pay the air conditioning ("***AC***") and common area maintenance ("***CAM***") charges despite occupying the property in the mall.

13. Additionally, he points out that the Arbitrator failed to appreciate the letter dated 21.05.2018 written by the respondent admitting that the payment is due and draws my attention to the said letter. The operative portion of the said letter reads as under:

> *"...In view of the above, it is advised that the complete details of common area maintenance charges along with mode of payment with relaxation/ discount, instalments and time period*

be brought into knowledge of my client so that necessary steps can be taken to clear the dues. It is further requested that in view of the fact that the shop has not been functional for the past two years, the common area maintenance charges be demanded proportionately as per the actual usage. Further it is also requested that the permission for installing iron shutters instead of glass doors be given for safety purposes."

14. I have heard learned counsel for the petitioners and also perused the material on record.

15. The principles with regard to limited scope of interference by a Court under Section 34 of the 1996 Act is well settled and has been reiterated time and again by the Hon'ble Supreme Court and this Court. In this regard reliance is placed on ***Consolidated Construction Consortium Limited v. Software Technology Parks of India, 2025 INSC 574 (paragraph 23).*** The Court in absence of any ground under Section 34 of the 1996 Act, it is not to re-assess the facts or re-examine the evidences to find out whether a different decision can be arrived at. If the view of the Arbitral Tribunal is plausible, the Court will not interfere.

16. The Arbitrator in the impugned Award has dealt with the above contention of the petitioner in paragraph 6.6 which reads as under:

"6.6. ISSUE NO. 5 Whether the Respondent/Counter Claimant is entitled to an award of Rs. 1,43,12,012/-? OPR

6.6.1. The Clauses 24 and 25 of the Builder Buyer Agreement clearly establish that a Maintenance Agreement is requires to be signed by the Claimant and the Maintenance Company "as and when called upon by the Builder", which is admitted that it

never happened. During cross examination of RW-1, the witness was asked regarding the maintenance agreement not being executed with the Builder Buyer Agreement. The line of question for this aspect goes by:

Q. 13 Have you in response to the Claim Statement filed by the Claimant, or anywhere else placed a copy of the maintenance agreement which was supplied to the claimant?

Ans. No.

Q. 14 If the maintenance agreement was already supplied to claimant as stated by you, why was it not executed at the time of execution of the Builder Buyer Agreement dated 02.06.2015?

Ans. Draft maintenance agreement was handed over to Claimant and was required to be executed by Claimant and returned to Respondent. Claimant never executed and returned copy of the said maintenance agreement to us.

Q. 15 Did you ever request or notify Claimant to hand over executed copy of the said maintenance agreement after execution of the Builder Buyer Agreement dated 02.06.2015? If yes, can you show it from the records?

Ans. We had requested them many times orally as well as during meetings, however, no such written request was issued and therefore is not placed on record. (Vol.) Bills in relation to common area maintenance (CAM) charges and air conditioning charges were raised on the claimant but Claimant never objected to the rate of the common area

maintenance (CAM) charges and air conditioning charges.

6.6.2. From the foregoing line of cross-examination of the Respondent Witness (RW-1), it is evident that no maintenance agreement was ever executed between the parties. The Respondent/Counter Claimant has not produced any documentary evidence on record to substantiate that a draft maintenance agreement was shared with the Claimant. Furthermore, the Respondent/Counter Claimant admits that no written request or formal communication was made to the Claimant seeking execution of the said draft. The alleged oral requests or verbal exchanges cannot substitute the requirement of a formal agreement.

6.6.3. The Tribunal notes that Clause 24 of the Builder Buyer Agreement unequivocally stipulates that a separate Maintenance Agreement was to be executed between the Claimant and the designated Maintenance Agency "as and when called upon by the Builder." It is an admitted position, as per the testimony of RW-1 during cross-examination, that no formal communication or written notice was ever issued by the Respondent/Counter Claimant requiring the Claimant to execute such Maintenance Agreement. Furthermore, the Respondent/Counter Claimant has failed to place on record any document evidencing the actual delivery of a draft Maintenance Agreement to the Claimant. No such draft agreement has been filed either with the Statement of Defence or with the Counter-Claim. In the absence of a duly executed

and binding Maintenance Agreement, the Claimant cannot be held legally obligated to pay any CAM or AC charges allegedly arising under such non-existent arrangement.

6.6.4. It is pertinent to note that the Respondent/Counter Claimant has not led any evidence through any authorised representative of the alleged maintenance service provider, WYN Ventures Pvt. Ltd. nor has it established the existence of a contractual relation between the Claimant and the said entity. Consequently, any demand notices issued by WYN Ventures seeking payment of CAM and AC charges-especially when based on arbitrary and unverified rates-do not possess any legal force. Moreover, the Respondent/Counter Claimant has not placed on record any material to establish that such amounts were paid by it on behalf of the Claimant. The only material relied upon by the Respondent/Counter Claimant is a self-generated table of computation. The Tribunal further observes that at no stage, whether prior to the invocation of arbitration or during these proceeding, the Respondent/Counter Claimant has furnished any computation or documentary evidence, such as actual invoices, which might lend credence to its claim. The "Statements of Account" filed belatedly as Additional Documents on 21.03.2023 merely indicate lump-sum figures towards CAM and AC charges, but do not refer to specific invoices or their respective details. Such material, being devoid of objective corroboration, lacks probative value and does not satisfy the evidentiary threshold.

6.6.5. In the absence of any proof that the Respondent/Counter Claimant was either authorised by WYN Ventures to recover such amounts, or that the Respondent/Counter Claimant had made any payments to WYN Ventures on behalf of the Claimant, the counter-claim preferred by the Respondent/Counter Claimant is found to be without merit. Therefore, for the above reasons the ISSUE No. 5 is decided against the Respondent/Counter Claimant"

17. The Arbitrator has categorically held that the service provider was WYN Ventures and there is no contractual relationship between the respondent and WYN Ventures. Consequently, WYN Ventures cannot make any demand against the respondent and that too on arbitrary and unverified figures. The Arbitrator further held that the demands made by WYN Ventures possess no legal force and hence no counter-claim of the petitioner was maintainable.

18. I am in total agreement with the findings of the Arbitrator, the same are well reasoned based on appreciation of evidence and a very plausible view. The Arbitrator, upon a careful appreciation of the evidence, has rightly held that no Maintenance Agreement was ever executed between the parties, nor has any material been produced to establish an agreement was executed with the respondent. The petitioner's reliance on alleged oral requests or unsubstantiated computations, in the absence of any contemporaneous record or documentary proof, was rightly rejected by the Arbitrator. This Court concurs with the view that in the absence of a duly executed and binding Maintenance Agreement, no legal obligation could be fastened upon the respondent to pay CAM or AC charges. The Tribunal's reasoning is

sound, well-founded on evidence, and does not suffer from any perversity or illegality thereby warranting interference under Section 34 of the 1996 Act.

19. Hence, there is no reason to interfere with the Award.

20. The petition is dismissed with pending applications, if any.

JASMEET SINGH, J

OCTOBER 14, 2025/AS

(Corrected and released on 23.10.2025)