



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 14<sup>TH</sup> DAY OF NOVEMBER, 2025**



**BEFORE**

**THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ**

**CIVIL MISC. PETITION NO. 155 OF 2025**

**BETWEEN:**

MRS. LUBNA SHAH  
W/O KALEEM SHAH  
AGED ABOUT 59 YEARS  
RESIDING AT NO.1420  
WYNHURSTLANE, VIENNA  
VA 22182, USA  
ALSO AT  
NO2,3D MAIN ROAD, VASANTH NAGAR BENGALURU,  
KARNATAKA- 560052  
REP. BY HER GPA  
MR. ABUBAKER SIDDIQUE

...PETITIONER

(BY SRI. SAMARTH SHREEDHAR., ADVOCATE)

**AND:**

1. B. M. JAYESHANKAR  
DIRECTOR OF  
M/S VARIN INFRA PROJECT PVT. LTD  
PRESENTLY HAVING OFFICE AT  
2/4, LANGFORD GARDENS  
RICHMOND TOWN  
BENGALURU – 560025.
2. B.M KARUNESH  
DIRECTOR OF  
M/S VARIN INFRA PROJECT PVT. LTD,  
PRESENTLY HAVING OFFICE AT  
2/4, LANGFORD GARDENS  
RICHMOND TOWN  
BENGALURU 560025.





3. M/S VARIN INFRA PROJECT PVT. LTD,  
REGISTERED UNDER COMPANIES ACT OF 1956 REP. BY  
ITS MANAGING DIRECTOR  
PRESENTLY HAVING OFFICE AT  
2/4, LANGFORD GARDENS  
RICHMOND TOWN, BENGALURU - 560025

...RESPONDENTS

(BY SRI.RAKSHITH PAI., ADVOCATE FOR R1 TO R3)

THIS CMP IS FILED UNDER SECTION 11(6) OF ARBITRATION AND CONCILIATION ACT 1996 PRAYING TO APPOINT RETD. JUSTICE ASHOK HINCHEGERI OR SUCH OTHER PERSON AS THIS HONBLE COURT MAY DEEM FIT, AS THE SOLE ARBITRATOR UNDER SEC. 11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996 FOR RESOLVING THE DISPUTES AS PER CLAUSE 22.3 06 OF ARISING UNDER THE JDA DATED 27.06.2016 I.E. ANNEXURE D AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

### **ORAL ORDER**

1. The petitioner is before this Court seeking for the following reliefs;
  - a. *Appoint retd. Justice Ashok Hinchegeri or such other person as this Hon'ble Court may deem fit, as the sole Arbitrator under Sec. 11(6) of the arbitration and Conciliation Act, 1996 for resolving the disputes as per clause 22.3 06 of arising under the JDA dated 27.06.2016 i.e. Annexure-D.*
  - b. *Award costs of the proceedings and*
  - c. *Pass any such further order(s) as this Hon'ble Court deems fit and necessary given the facts and circumstances of the case, in the interest of justice and equity.*
  
2. The petitioner and respondent No.3 had entered into
  - a Joint Development Agreement on 27.06.2016



which is governed by an arbitration Clause in terms Clause 22 thereof, which is reproduced hereunder for easy reference;

**22. GOVERNING LAW AND DISPUTE RESOLUTION:**

*22.1 This Joint Development Agreement shall be governed by and construed in accordance with the laws of India. Subject to the terms and conditions of this Joint Development Agreement, each Party agrees that the courts at Bangalore shall have the supervisory jurisdiction to settle any claim or matter arising under this Joint Development Agreement.*

*22.2 If any dispute arises amongst Parties hereto during the subsistence of this Joint Development Agreement or thereafter, in connection with the validity, interpretation, implementation or alleged breach of any provision of this Joint Development Agreement, the Parties shall endeavour to settle such dispute amicably.*

*22.3 In the case of failure by the Parties to resolve the dispute in the manner set out above within reasonable time from the date when the dispute arose, the dispute shall be referred to a sole arbitrator to be appointed jointly by the Developer and the First Party/Owners. The hearings of the arbitrator shall be held in Bangalore under provisions of the Arbitration and Conciliation Act, 1996. The proceedings of the arbitration shall be conducted in the English language. The costs and expenses of the arbitration, including, without limitation, the fees of the arbitration and the fees of the arbitrator, shall be borne by the First Party/Owners and the Developer in the manner decided by the arbitrator.*

*22.4 Each Party shall co-operate in good faith to expedite, to the maximum extent practicable, the conduct of any arbitral proceedings commenced under this Joint Development Agreement.*



*22.5 The award passed by the arbitrator shall be substantiated in writing and the First Party/Owners and the Developer shall submit to the arbitrator's award, which shall be enforceable in any competent court of law.*

3. The petitioner vide its letter dated 27.01.2025 called upon the respondent for amicable settlement. No amicable settlement having occurred, the petitioner invoked the arbitration Clause and issued a notice on 18.02.2025 nominating its arbitrator.
4. The said notice having been served, the respondent had replied on 04.03.2025 seeking some time to reply to the said notice. It is at that stage that the petitioner had filed the above petition, contending that there is no consent or concurrence as regards the appointment of an arbitrator.
5. Notice having an issue to the respondent, the respondent had entered an appearance and filed his statement of objection.
6. The submission of Sri.Rakshith Pai., learned counsel for respondents, is that;



- 6.1. Respondents No.1 and 2 are not parties to the Joint Development Agreement, inasmuch as it is only respondent No.3 who is a party to the said agreement and as such, respondents No.1 and 2 cannot be made to undergo the Arbitral Proceedings.
- 6.2. Secondly, he submits that the notice which had been issued invoking the arbitration Clause on 18.02.2025 had not spent itself inasmuch as before the expiry of 30 days on 12.03.2025, the above petition had been filed and as such, the reply which had been issued by the respondents could not be taken into consideration by the respondents.
- 6.3. Though belatedly, the respondents replied on 31.03.2025, taking up various contentions regarding the non-arbitrability of the dispute and that there is no dispute that requires arbitration.



7. Learned counsel for the petitioner by relying on the Joint Development Agreement contends that;
  - 7.1. Respondents No.1 and 2 are Directors of respondent No.3, and respondent No.2 is a signatory to the Joint Development Agreement, and as such, they are related parties and are required to be made part of the arbitral proceedings.
  - 7.2. Insofar as the amicable settlement and earlier filing of the petition, he submits that even in the subsequent reply, there being no concurrence made by the respondents, the present petition, though filed prematurely, could be considered.
8. Heard Sri.Samarth Shreedhar., learned counsel appearing for the petitioner and Sri.Rakshith Pai., learned counsel appearing for respondents and perused papers.



9. The points that would arise for consideration in the present matter are;

- 1. Whether the present petition can be taken up for consideration, though filed prematurely before the expiry of 30 days as required under Section 21 read with Section 11 of the Arbitration and Conciliation Act, 1996?**
- 2. Whether there exists an arbitration Clause requiring the parties to be referred to arbitration, and if so, are respondents No.1 and 2 also required to be made parties to the arbitration?**
- 3. What order?**

10. I answer the above points as under:

**11. Answer to point No.1: Whether the present petition can be taken up for consideration, though filed prematurely before the expiry of 30 days as required under Section 21 read with Section 11 of the Arbitration and Conciliation Act, 1996?**

11.1. Section 21 of the Arbitration and Conciliation Act, 1996 is reproduced hereunder for easy reference;

**21. Commencement of arbitral proceedings.**— Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on



*which a request for that dispute to be referred to arbitration is received by the respondent.*

11.2. It is under Section 21 of the Arbitration and Conciliation Act, 1996, that the notice is required to be issued invoking the arbitration Clause, referring to the matter to arbitration. Section 11 deals with a situation where an arbitrator is not appointed, more particularly Sub-sections (4) and (5) of Section 11, which are reproduced hereunder for easy reference.

**11. Appointment of arbitrators.—**

**(4)** *If the appointment procedure in sub-section (3) applies and—*

*(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or*

*(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,*

*the appointment shall be made, upon request of a party, by 1 [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court];*

**(5)** *Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be*



*made, upon request of a party, by 1 [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court].*

11.3. Sub-section (4) of Section 11 indicates that, if the procedure under Sub-section (3) of Section 11 were to apply, if a party fails to appoint an arbitrator within 30 days from the receipt of a request to do so from the other party, the appointment shall be made on application of the party by arbitral institution designated by the supreme Court in the case of International Commercial Arbitration or by High Court in case of arbitration other than International Commercial Arbitration, as the case may be.

11.4. An agreement having arrived at between the parties referred to Sub-section (3) or (4) of Section 11 being applicable, any notice issued under Section 21 would require a time period of 30 days to be granted to the addressee of the notice to concur with the nomination made or to appoint its arbitrator.



11.5. This is for the reason that if the address were to agree to the appointment made by the person issuing the notice, there would be no requirement to file a proceeding under section 11.

11.6. If the Noticee were to suggest some other person to be an arbitrator, then that could have to be considered by the person issuing the notice, if the person issuing the notice is acceptable to such nomination there would be no requirement for any proceeding to be initiated before this Court under Section 11.

11.7. It is only if there is no reply or concurrence that proceedings under Section 11 are required to be filed.

11.8. In the present case, the petition had been filed before the expiry of the period of 30 days; however, the addressee, i.e., the respondents, have not replied within 30 days and have



replied subsequently. Apart from that, the respondents have not concurred with the appointment of the arbitrator. Thus, rendering the proceedings infructuous, in fact, respondents have contended that there is no arbitral dispute and that there is no dispute which is required to be referred to arbitration.

11.9. That being the case, though the petition is premature, I am of the considered opinion that on technicalities the said petition may not be dismissed but taking into consideration the reply which had been addressed by respondents, an order on merits could be passed.

***11.10. Hence, I answer point No.1 by holding that once a notice under Section 21 has been issued, the noticee is required to be provided 30 clear days of time from the date of receipt of the notice to respond to***



***same in terms Sub-section (4) of Section 11.***

***11.11.If the proceedings are filed before the expiry of 30 days, in all cases the same would not be required to be dismissed. If the noticee were to agree to the nomination made, then the said nomination could be accepted and proceedings disposed of.***

***11.12. In the event of any other defence being taken, the same could be considered on merits, subject to the fact that hyper technicalities do not delay the initiation of arbitration.***

***12. Answer to point No.2: Whether there exists an arbitration Clause requiring the parties to be referred to arbitration, and if so, are respondents No.1 and 2 also required to be made parties to the arbitration?***

12.1.The Joint Development Agreement has been entered into between the petitioner and



respondent No.3. Respondent No.3 in the said agreement is represented by respondent No.2, and when the matter was presented for registration, the SPA holder of respondent No.2 presented the same for registration.

12.2. Needless to say, respondent No.1 is neither a signatory nor a party to the said agreement; suffice it to say that respondent No.2 is only a signatory to the agreement and not a party to it.

12.3. Submission of learned counsel for the petitioner is that respondent No.3 is a Shell Company and a special purpose vehicle which has been established for the purpose of this particular project. There being no assets in respondent No.3-Company, apart from the subject matter of the present agreement, any order which may be passed in the said proceedings cannot be



enforceable, otherwise then against the directors and shareholders of the company.

12.4.I am unable to agree with said submission for a simple reason that a Director and Shareholder is distinct from a corporate entity as held so long ago in ***Salomon v Salomon & Co Ltd.***, reported in ***[1897] AC 22*** both the Directors and Company are treated to be different, and they cannot be brought on *par* with each other to make them party to an arbitration. Merely, because there is a possibility that the company may not be able to make payment of the due amounts.

12.5.If at all the company was not able to make payment of the awarded amounts, they could always be proceeding taken, which the petitioner would always be entitled to, and this cannot now be a ground to include the



Directors of the company in the Arbitration Proceedings.

12.6. The sanctity of arbitration is required to be limited to the parties to the agreement, and even a signatory to the agreement could stand on a different footing and would not be a party to the agreement.

12.7. However, there is no particular dispute as regards the arbitration Clause inasmuch as even respondents do not dispute that respondent No.3 is a party to the arbitration Clause.

**12.8. *In that view of the matter, I answer point No.2 by holding that arbitration could be only between parties to the Arbitration Agreement; non-parties cannot be made parties to the arbitration unless exceptional circumstances exist. In the present matter, the arbitration is to be***



***between the petitioner and respondent No.3, and respondents No.1 and 2 cannot be parties to such Arbitral Proceedings.***

**13. Answer to point No.3: what order?**

13.1. At this stage, both the counsels submit the matter may initially be referred to Mediation and thereafter an arbitrator could be appointed, so as to enable the parties to explore the possibility of amicable settlement before getting into the adjudicatory mechanism. As such I pass the following;

**ORDER**

- i. CMP is **allowed**.
- ii. The matter is referred to mediation. The Director, Karnataka Mediation Centre to appoint a mediator to resolve the dispute between the parties. Since an order has been passed in the presence of both the counsels, both parties shall appear before



the Director, Karnataka Mediation Centre,  
without the requirement of any further  
notice **at 02.30 p.m. on 10.12.2025.**

- iii. In the event of mediation being successful, the successful mediation report to be placed before this Court.
- iv. In the event of mediation not being successful, the Director of the Mediation Centre is directed to forward a copy of the file to the Director of the Arbitration and Conciliation Centre attached to this Court.
- v. **Sri. Justice V.Jagannathan.**, former Judge of this Court is appointed as a sole arbitrator to arbitrate the dispute between the parties under the aegis of the Arbitration Centre attached to this Court with the consent of both parties.
- vi. All contentions are kept open.



- vii. Registry is directed to return all original or certified copies to the respective party who has filed it by following due procedure.

**SD/-**  
**(SURAJ GOVINDARAJ)**  
**JUDGE**

SR  
List No.: 1 Sl No.: 38