

**IN THE HIGH COURT FOR THE STATE OF
TELANGANA AT: HYDERABAD**

HON'BLE SRI JUSTICE K. LAKSHMAN

ARBITRATION APPLICATION No. 159 OF 2025

DATE:31.07.2026

Between:

UBR's Housing and Infra Developers LLPApplicant

and

Vanga Sudheer Reddy and anotherRespondents

This Court passed the following:

ORDER

Heard Sri Rusheek Reddy K.V., learned counsel for the Applicant and Sri R. Sushanth Reddy, learned Counsel appearing for the Respondents.

2. The present arbitration application has been filed under Section 11(5) & (6)(b) of the Arbitration & Conciliation Act, 1996 (hereinafter "the Act"), seeking appointment of a sole arbitrator to resolve disputes between the parties.

3. The Applicant, UBR's Housing and Infra Developers LLP, a Limited Liability Partnership Firm incorporated in the year

2018, represented by its designated partner Mr. Giribabu. He established the Applicant firm for the purpose of investing in real estate business. In the year 2019, the Applicant was looking to invest in land in the outskirts of Hyderabad, and purchased some land from third parties in Maheshwaram village, Ranga Reddy district. During the said transactions, the Applicant firm was informed about Respondent No. 1, who was known to have prevalence and experience in the real estate domain. One relative of Mr. Giribabu introduced him to Respondent No. 1, who was desirous to be a facilitator in arranging land for the purpose of purchase or development. Respondent No. 1 represented that he was holding agricultural land in Maheshwaram, Ranga Reddy district, and proposed to the Applicant to immediately transfer money so that the said land would be transferred for development purposes.

4. The Applicant submits that Respondent No. 1 induced the Applicant and its designated partner to enter into a Memorandum of Understanding (MoU) dated 24.06.2019 and another Memorandum of Understanding (MoU) dated 19.09.2019.

Subsequently, a Memorandum of Understanding (MoU) for Sale of Properties dated 10.11.2021 was also executed. The Applicant paid huge sums of money in respect of the aforesaid MoUs. Despite receiving the payment, Respondent No. 1 neither honored the terms of such agreements nor returned the monies. In this regard, separate legal proceedings have been initiated for recovery of money for the said transactions.

5. The Applicant submits that the subject-matter of dispute in the present arbitration application pertains to the “Sub-MoU for Development” dated 10.11.2021. Respondent No. 1 represented that the Respondents have possession of about 163 acres of the overall extent of 428 acres, which was given for development to a third party i.e. Mr. A. Vekateshwar Reddy on 24.08.2021. In the said portion of land, the Respondents were entitled to 58% and the third party was entitled to 42%. The Respondents proposed that upon payment of developmental fee or sub-developing the said land, the developed area out of the said 58% could be shared in the ratio of 55:45 between the Respondents and the Applicant. Consequently, the aforesaid Sub-MoU was entered into and an

amount of Rs. 5 crores was paid by the Applicant as refundable security deposit. Despite completing the obligation of payment of refundable security deposit under the Sub-MoU upon execution, the Respondents failed to give the possession of the scheduled property or give details regarding the payment of developmental fee.

6. In December 2022, the Applicant confronted the Respondents regarding the Sub-MoU, registration of Development Agreements, delivery of possession of land, and repayment of security deposit. On negotiation, the Respondents requested the Applicant for some time. Thereafter, the Applicant confronted Respondent No. 1 on several occasions in 2023 and 2024. Vexed by the delayed deliberations, in October 2024, the Applicant enquired regarding the land and found that the Respondents do not have absolute title over the said land, and have been misrepresenting and defrauding the Applicant to gain monies. The Applicant is subjected to irreparable loss on account of incurring huge interests and loss of profit, and thereby entitled to an amount of Rs. 5 crores paid as security deposit along with 36% interest

from the date of disbursal along with future interest of 36% till the date of payment along with damages.

7. The Applicant issued an Arbitration Notice dated 04.11.2024 invoking Clause 25 of the “Sub-MoU” dated 10.11.2021 seeking resolution of disputes through arbitration and has nominated Sri Justice Challa Kodandaram, Former Judge, High Court of Telangana, to be appointed as the Sole Arbitrator.

8. On the contrary, Respondent No. 1 submits that in respect of the MoU dated 24.06.2019, MoU dated 19.09.2019, and the MoU for Sale of properties dated 10.11.2021; the Applicant has filed a suit for recovery of amount *vide* OS No. 442 of 2025, which is pending on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad. Having filed the said suit which is pending adjudication, the Applicant cannot invoke arbitration for adjudication of disputes which are the subject matter of the aforesaid suit. The Sub-MoU was entered into pursuant to the Development Agreement dated 24.08.2021 with a third party i.e. Mr. Venkateshwar Reddy, who is not a party to the Sub-MoU and as such not a party to the arbitration agreement. The subject-matter

of dispute under the said Sub-MoU directly affects the rights and liabilities of the third party, and has an *erga omnes* effect, thereby requiring centralized adjudication.

9. To sum up, the Applicant submits that there are disputes between the Applicant and the Respondents with regard to the delivery of possession of land and recovery of security deposit. On failure of deliberations and negotiations, the Applicant issued an Arbitration Notice invoking Clause 25 of the Sub-MoU for resolving disputes between the parties. However, the Respondents contend that the subject-matter of the dispute affects the rights and liabilities of the third party, has an *erga omnes* effect, and requires centralized adjudication.

10. It is apt to note that as per Clause 25 of the “Sub-MoU for Development” deals with dispute resolution mechanism. It is relevant and it is extracted below:-

“25. In the event of any disputes between the parties hereto relating to the matters mentioned above, the same shall be resolved through Sole Arbitration appointed by mutual consent as per the provisions of the Arbitration & Conciliation Act,

1996 and the statutory modifications thereof. The arbitration proceeding shall be conducted at Hyderabad on the date, time and place as decided by the Arbitrator so appointed for this purpose.”

Thus, an arbitration agreement exists between the parties. The existence of an arbitration agreement under the said Sub-MoU is not disputed by the Respondents. The said clause clearly states that in the event of disputes between the parties related to the matters mentioned in the said agreement, the same shall be resolved through arbitration by appointment of a Sole Arbitrator.

11. On perusal of the facts of the present case, *prima facie*, it is evident that there exists an arbitration agreement and there are arbitrable disputes between the parties. However, the Respondents contend that the present application is liable to be dismissed as the subject-matter of the dispute affects the rights and liabilities of a third party, has an *erga omnes* effect, and requires centralized adjudication. In this regard, the Respondents place reliance on the judgment of the Hon’ble Supreme Court in **Vidya Drolia v. Durga Trading Corporation**¹ to contend that arbitration as a dispute

¹ (2021) 2 SCC 1

resolution mechanism is binding on the parties to the arbitration agreement. Arbitration is unsuitable when it has an *erga omnes* effect, i.e. when it affects the rights and liabilities of third parties who are not bound by the arbitration agreement. It is not a suitable mode of dispute resolution when the subject-matter requires collective and centralized adjudication before one Court or forum. The relevant paragraph is extracted below:

49. Exclusion of actions in rem from arbitration, expositis the intrinsic limits of arbitration as a private dispute resolution mechanism, which is only binding on “the parties” to the arbitration agreement. The courts established by law on the other hand enjoy jurisdiction by default and do not require mutual agreement for conferring jurisdiction. The Arbitral Tribunals not being courts of law or established under the auspices of the State cannot act judicially so as to affect those who are not bound by the arbitration clause. Arbitration is unsuitable when it has *erga omnes* effect, that is, it affects the rights and liabilities of persons who are not bound by the arbitration agreement. Equally arbitration as a decentralised mode of dispute resolution is unsuitable when the subject-matter or a dispute in the factual background, requires collective adjudication before one court or forum. Certain disputes as a class, or sometimes the dispute in the given facts, can be efficiently resolved only through collective litigation

proceedings. Contractual and consensual nature of arbitration underpins its ambit and scope. Authority and power being derived from an agreement cannot bind and is non-effective against non-signatories. An arbitration agreement between two or more parties would be limpid and inexpedient in situations when the subject-matter or dispute affects the rights and interests of third parties or without presence of others, an effective and enforceable award is not possible. Prime objective of arbitration to secure just, fair and effective resolution of disputes, without unnecessary delay and with least expense, is crippled and mutilated when the rights and liabilities of persons who have not consented to arbitration are affected or the collective resolution of the disputes by including non-parties is required. Arbitration agreement as an alternative to public fora should not be enforced when it is futile, ineffective, and would be a no result exercise.

12. Further, the Respondents place reliance on the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Boghara Polyfab Private Limited**², wherein the preliminary issues that may arise for consideration under a Section 11 application were identified and segregated into three categories. The relevant paragraphs are extracted below:

² (2009) 1 SCC 267

22. Where the intervention of the court is sought for appointment of an Arbitral Tribunal under Section 11, the duty of the Chief Justice or his designate is defined in *SBP & Co.* [(2005) 8 SCC 618] This Court identified and segregated the preliminary issues that may arise for consideration in an application under Section 11 of the Act into three categories, that is, (i) issues which the Chief Justice or his designate is bound to decide; (ii) issues which he can also decide, that is, issues which he may choose to decide; and (iii) issues which should be left to the Arbitral Tribunal to decide.

22.1. The issues (first category) which the Chief Justice/his designate will have to decide are:

(a) Whether the party making the application has approached the appropriate High Court.

(b) Whether there is an arbitration agreement and whether the party who has applied under Section 11 of the Act, is a party to such an agreement.

22.2. The issues (second category) which the Chief Justice/his designate may choose to decide (or leave them to the decision of the Arbitral Tribunal) are:

(a) Whether the claim is a dead (long-barred) claim or a live claim.

(b) Whether the parties have concluded the contract/transaction by recording satisfaction of their mutual rights and obligation or by receiving the final payment without objection.

22.3. The issues (third category) which the Chief Justice/his designate should leave exclusively to the Arbitral Tribunal are:

(i) Whether a claim made falls within the arbitration clause (as for example, a matter which is reserved for final decision of a departmental authority and excepted or excluded from arbitration).

(ii) Merits or any claim involved in the arbitration.

13. On the contrary, the Applicant places reliance on the judgment of the Hon'ble Supreme Court in **Sanjeev Prakash v. Seema Kukreja**³ to contend that when a dispute requires a detailed consideration of the clauses of the agreements along with surrounding circumstances in which the agreements were entered into, such issue cannot be dealt with at the referral stage in view of limited jurisdiction of the Referral Court under Section 11 of the Act.

14. Further reliance has been placed on the judgments of the Hon'ble Supreme Court in **Pravin Electricals Private Limited v. Galaxy Infra and Engineering Private Limited**⁴ and **SBI General Insurance v. Krish Spinning**⁵, to contend that the scope of examination at the referral stage under Section 11 of the Act is to consider only the *prima facie* existence of an arbitration agreement.

15. It is relevant to note that the scope of enquiry under Section 11 of the Act is extremely limited. The Referral Court has to only

³ MANU/SC/0238/2021

⁴ (2021) 5 SCC 671

⁵ 2024 SCC OnLine SC 1754

see whether *prima facie* an arbitration agreement exists or not. In the present case, there are disputes between the Applicant and the Respondents which are arbitrable in nature. The existence of an arbitration agreement is undisputed. However, the Respondents contend that the Applicant cannot invoke arbitration for adjudication of disputes which are the subject-matter of a pending civil suit between the parties. Also, the subject-matter of the dispute affects the rights and liabilities of the third party, has an *erga omnes* effect, and requires centralized adjudication before one Court or forum.

16. Both the learned counsel for the Applicant and respondents have submitted written synopsis of contentions and judgments vide USR No.86400, dated 22.07.2026 and USR No.85359 of 2026, dated 17.07.2026 respectively.

17. I have considered the submissions advanced and authorities relied upon by both the parties. In my considered opinion, the Respondents' contention that the Applicant cannot invoke arbitration for adjudication of disputes which are the subject-matter of a pending civil suit does not hold water. The said

suit is pending pertaining to the other MoUs/agreements entered into by the parties. On a *prima facie* examination, this Court opines that the “Sub-MoU for Development” dated 10.11.2021 does not form the subject-matter of the pending civil suit. The pending civil suit concerning other agreements does not denude the Applicant’s right to invoke arbitration.

18. The Respondents further contend that the disputes sought to be referred to arbitration have an *erga omnes* effect and affect the rights and liabilities of a third party. In this regard, the Respondents have placed reliance on the judgment in **Vidya Drolia** (*supra*). It is apt to note that in the aforementioned judgment, the Hon’ble Supreme Court has propounded a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable. Further, the aspects as to who decides the question of non-arbitrability; the principle of competence-competence; and the scope of review at referral stage have been extensively discussed in the said judgment. The relevant paragraphs are extracted hereunder:

76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable:

76.1. (1) When cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

76.2. (2) When cause of action and subject-matter of the dispute affects third-party rights; have *erga omnes* effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.

76.3. (3) When cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.

76.4. (4) When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

76.5. These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject-matter is non-arbitrable. Only when the answer is affirmative that the subject-matter of the dispute would be non-arbitrable.

83. Who decides the question of non-arbitrability? — a jurisdictional question is a technical legal issue, and requires clarity when applied to facts to avoid bootstrapping and confusion. The doubt as to who has the jurisdiction to decide could hinder, stray, and delay a many arbitration proceedings. Unfortunately, *who decides non-arbitrability* remains a vexed question that does not have a straightforward universal answer as

would be apparent from opinions in the at-variance Indian case laws on this subject. To some extent, the answer depends on how much jurisdiction the enactment gives to the arbitrator to decide their own jurisdiction as well as the court's jurisdiction at the reference stage and in the post-award proceedings. It also depends upon the jurisdiction bestowed by the enactment viz. the facet of non-arbitrability in question, the scope of the arbitration agreement and authority conferred on the arbitrator.

129. Principles of competence-competence have positive and negative connotations. As a positive implication, the Arbitral Tribunals are declared competent and authorised by law to rule as to their jurisdiction and decide non-arbitrability questions. In case of expressed negative effect, the statute would govern and should be followed. Implied negative effect curtails and constrains interference by the court at the referral stage by necessary implication in order to allow the Arbitral Tribunal to rule as to their jurisdiction and decide non-arbitrability questions. As per the negative effect, courts at the referral stage are not to decide on merits, except when permitted by the legislation either expressly or by necessary implication, such questions of non-arbitrability. Such prioritisation of the Arbitral Tribunal over the courts can be partial and limited when the legislation provides for some or restricted scrutiny at the “first look” referral stage. We would, therefore, examine the principles of competence-competence with reference to the legislation, that is, the Arbitration Act.

139. We would not like to be too prescriptive, albeit observe that the court may for legitimate reasons, to prevent wastage of public and private resources, can exercise judicial discretion to conduct an intense yet summary prima facie review while remaining conscious that it is to assist the arbitration procedure and not usurp jurisdiction of the Arbitral Tribunal. Undertaking a detailed full review or a long-drawn review at the referral stage would obstruct and cause delay undermining the integrity and efficacy of arbitration as a dispute resolution mechanism. Conversely, if the court becomes too reluctant to intervene, it

may undermine effectiveness of both the arbitration and the court. There are certain cases where the prima facie examination may require a deeper consideration. The court's challenge is to find the right amount of and the context when it would examine the prima facie case or exercise restraint. The legal order needs a right balance between avoiding arbitration obstructing tactics at referral stage and protecting parties from being forced to arbitrate when the matter is clearly non-arbitrable. [Ozlem Susler, "The English Approach to Competence-Competence" Pepperdine Dispute Resolution Law Journal, 2013, Vol. 13.]

140. Accordingly, when it appears that prima facie review would be inconclusive, or on consideration inadequate as it requires detailed examination, the matter should be left for final determination by the Arbitral Tribunal selected by the parties by consent. The underlying rationale being not to delay or defer and to discourage parties from using referral proceeding as a ruse to delay and obstruct. In such cases a full review by the courts at this stage would encroach on the jurisdiction of the Arbitral Tribunal and violate the legislative scheme allocating jurisdiction between the courts and the Arbitral Tribunal. Centralisation of litigation with the Arbitral Tribunal as the primary and first adjudicator is beneficent as it helps in quicker and efficient resolution of disputes.

154. Discussion under the heading “**Who Decides Arbitrability?**” can be crystallised as under:

154.1. Ratio of the decision in *Patel Engg. Ltd.* [SBP & Co. v. *Patel Engg. Ltd.*, (2005) 8 SCC 618] on the scope of judicial review by the court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the amendments by Act 3 of 2016 (with retrospective effect from 23-10-2015) and even post the amendments vide Act 33 of 2019 (with effect from 9-8-2019), is no longer applicable.

154.2. Scope of judicial review and jurisdiction of the court under Sections 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.

154.3. The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of “second look” on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.

154.4. Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably “non-arbitrable” and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.

19. The aforesaid contention of the Respondents and the principles laid down in the aforementioned judgment have been duly considered. It is true that the Hon’ble Supreme Court has

recognized that disputes affecting third party rights, having an *erga omnes* effect may be non-arbitrable in nature. However, it has also clarified that the scope of judicial scrutiny at the referral stage under Section 11 of the Act is extremely limited. The Referral Court is required to undertake only a *prima facie* examination and may decline reference only when it is manifest and *ex facie* evident that the dispute is non-arbitrable. Further, the Supreme Court while affirming the principle of competence-competence held that it is a general rule that questions of non-arbitrability are to be determined by the Arbitral Tribunal in the first instance. In the present case, the facts of the case and submissions advanced do not lead to a conclusion that the disputes herein are demonstrably non-arbitrable. The dispute herein cannot be decided based on a *prima facie* review as the same would be inconclusive and inadequate. The objections raised by the Respondents require a detailed examination of the clauses in the “Sub-MoU” along with the agreement between the Respondents and the third party. Accordingly, in view of the legislative mandate of the Act pertaining to minimal judicial intervention at the referral stage and

the principles laid down in **Vidya Drolia** (*supra*), this Court opines that the question of non-arbitrability should be determined by the Arbitral Tribunal itself. In the event, the Arbitral Tribunal comes to a conclusion after a detailed enquiry that third party rights would be affected, it may implead such third party in the arbitral proceedings exercising its jurisdictional powers under Section 16 of the Act and in view of the principle laid down by the Supreme Court in **Adavya Projects Private Limited v. Vishal Structurals Private Limited**⁶. Needless to state that any observation or opinion rendered herein is based on *prima facie* examination. Nothing shall be construed as an observation made on merits of the case. It is for the Arbitral Tribunal to conduct a detailed enquiry into all factual and legal issues between the parties, and render its decision independently.

20. In light of the aforesaid discussion, the present arbitration application is allowed. Accordingly, **Sri Justice Ramesh Ranganathan, Former Chief Justice, High Court of Uttarakhand, House No. 12-13-1174, Street No. 10, Tarnaka,**

⁶ (2025) 9 SCC 686

Secunderabad – 500017 is appointed as Sole Arbitrator to adjudicate disputes between the parties. The parties are at liberty to take all the pleas and defences before the learned Sole Arbitrator.

Consequently, pending miscellaneous petitions, if any, in this Arbitration Application, shall stand closed.

K. LAKSHMAN, J

Date:31.07.2026.

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