



2026:CGHC:11713

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****ARBR No. 23 of 2024**

Singhania Buildcon Private Limited Through Its Authorised Signatory Shri Subodh Singhania Aged 55 Years, R/o 05 School Road, Choubey Colony, Raipur, Chhattisgarh

--- Applicant**versus**

1 - Merlin Projects Limited A Company Incorporated Under The Provisions Of The Companies Act 1956 And An Existing Company Under The Companies Act 2013 Having Its Registered Office At Merlin Oxford, 2nd Floor, 22 Prince Anwar Shah Road, Police Station Charu Market, Kolkata - 700033 Through Its Director Shri Sushil Mohta.

2 - Archees Real Estate Through Its Sole Proprietor, Meenali Singhania, W/o Subodh Singhania Aged 50 Years, R/o 05 School Road, Choubey Colony, Raipur, Chhattisgarh.

--- Respondent(s)

For Applicant	:	Mr. Sumant Das, Senior Advocate, Assisted by Ms. Anu Mishra and Mr. Kaif Ali Rizvi, Advocates.
For Respondent No. 1	:	Mr. Abhishek Sinha, Senior Advocate assisted by Mr. Ghanshyam Patel and Mr. Saptarshi Datta, Advocates.
For Respondent No. 2	:	Mr. Rajeev Shrivastava, Senior Advocate assisted by Mr. Akash Shrivastava, Advocate

ARBR No. 22 of 2024

Archees Real Estate Through Its Sole Proprietor Meenali Singhania, W/o Subodh Singhania, Aged 50 Years, R/o 05 School Road, Choubey Colony, Raipur Chhattisgarh.

---**Applicant**

Versus

1 - Merlin Projects Limited A Company Incorporated Under The Provisions Of The Companies Act, 1956 And An Existing Company Under The Companies Act, 2013 Having Its Registered Office At Merlin Oxford, 2nd Floor, 22 Prince Anwar Shah Road, Police Station Charu Market, Kolkata- 700033 Through Its Director Shri Sushil Mohta

2 - Singhania Buildcon Private Limited Through Its Authorized Signatory Shri Subodh Singhania, Aged 55 Years, R/o 05 School Road, Choubey Colony, Raipur, Chhattisgarh.

--- **Respondent(s)**

For Applicant	:	Mr. Rajeev Shrivastava, Senior Advocate assisted by Mr. Akash Shrivastava, Advocate
For Respondent No. 1	:	Mr. Abhishek Sinha, Senior Advocate assisted by Mr. Ghanshyam Patel and Mr. Saptarshi Datta, Advocates.
For Respondent No. 2	:	Mr. Sumant Das, Senior Advocate, Assisted by Ms. Anu Mishra and Mr. Kaif Ali Rizvi, Advocates.

Hon'ble Mr. Ramesh Sinha, Chief Justice

Order on Board

11/03/2026

1. Heard Mr. Sumant Das, learned Senior Advocate, Assisted by Ms. Anu Mishra and Mr. Kaif Ali Rizvi, learned counsel {for the applicant in ARBR No. 23/2024 and respondent No. 2 in ARBR 22/2024}, Mr. Rajeev Shrivastava, learned Senior Advocate assisted by Mr. Akash Shrivastava, learned counsel {for the applicant in ARBR No. 22/2024 and respondent No.

2 in ARBR No. 23/2024}, Mr. Abhishek Sinha, learned Senior Advocate assisted by Mr. Ghanshyam Patel, and Mr. Saptarshi Datta, learned counsel for the respondent-Merlin Projects Ltd.

2. By these petitions under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*for short, the Act of 1996*), the applicants seek a relief of appointment of a Sole Arbitrator in view of the provisions of the Act of 1996 and the subsequent amendments thereof from time to time read with clause 46 of the agreement dated 16.03.2007 between the parties for resolution of the disputes arising under the said agreement.
3. The facts, as projected by the applicants are that they are owners and are in possession of various parts and parcels of the land {as detailed in paragraph 2 of the petition} situated at Kota near Hotel Piccadilly, Raipur. The applicants-Archees Real Estate and Singhania Buildcon Pvt. Ltd. entered into an agreement with the respondent-Merlin Projects Ltd. on 27.11.2005 for development of a project named 'Singapore City' comprising of residential and commercial buildings in the parcel of the land situated at village Kota, near Hotel Piccadilly, Raipur. The parties agreed to create a Special Purpose Vehicle (for short, the SPV) for the said work. The parties entered into a subsequent agreement dated 16.03.2007 after the lands of the applicants were freed from all encumbrances and sanction for layout and land development permissions were jointly obtained by the applicants, thus, a joint venture was created by the applicants and the respondent No. 1 in the name of "Singhania Merlin Estate". The agreement dated 16.03.2007 enumerates the formation of the joint venture as well as the conditions under which the Joint venture will operate. The relevant terms and conditions of the agreement were (a) the name of the firm was Singhania Merlin Estate (b) The actual value of the said property was agreed at a sum of Rs.160 per sq ft and the same is to be handed over in joint venture and the same was to

be deposited in the account of the applicants by the respondent No. 1 as price of the said property; (c) The total land owned by and in possession of the applicants is 8,37,613 sq ft. (d) The total amount of the price of the land was fixed for a sum of Rs.13,40,18,080.00; (e) The agreement further stipulates that the land of the applicants will be treated as the capital of the applicants and the respondent No. 1 will introduce funds for commencing the work of the proposed project matching the capital of the applicants after which the proceeds from the sale of flats in the residential block of the project shall be distributed; (f) According to clause 17 of the agreement, if the respondent No. 1 fails to match the capital investment of the applicants by 30.09.2008, the respondent No. 1 will be bound to pay an interest on the balance amount at the rate of 12% p.a. to the applicants up to 31.03.2009 and the interest on the remaining amount from 01.04.2009 will be at the rate of 21% p.a.; and (g) As per the terms of the agreement all the decisions regarding the working of the joint venture will be taken by the parties in consonance with each other.

4. Apart from other obligations recorded in the agreement dated 16.03.2007, the parties in Clause 46 of the said agreement have recorded that any dispute in between the parties and counter proceedings and hearings shall take place only at Raipur, Chhattisgarh in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The applicants and the respondent No. 1, entered into a further agreement in the nature of Indenture of Partnership on 30.03.2007. The said agreement also contains an arbitration clause which states that "*All disputes which arise between the partners of their respective personal representatives whether during or after the determination of the partnership or whether in relation to the interpretation of these presents or to any act or omission of any party to the dispute or either of these or in relation to any other matter whatsoever*

touching the partnership affairs shall be referred to arbitrators, one to be nominated by each party in difference and if the arbitrators so appointed differ they will refer the matter to an. UMPIRE to be chosen by the arbitrators and every such reference shall be deemed as an Arbitrator under the Indian Arbitrator and Conciliation Act and the provision of the said act or statutory modification thereof for the time being in force shall apply.

5. Subsequently, the parties by way of three several agreements two of which dated 31.03.2007 and another dated 31.03.2008 formed the partnership business in the name of the 'Singhania Merlin Estate with effect of commencement from 17.03.2007. It is pertinent to state that by the agreement dated 31.03.2008, the parties refereeing themselves as partners agreed to purchase/acquire certain other land as more fully mentioned in the said schedule appended thereto. The parties set up an office at GE Road, Behind Hotel Piccadilly, Raipur, in order to carry on the development work at Raipur. Such Office was to look after the said 'Singapore City Project" which was the only purpose/ venture of the said legal relationship of the parties hereto.
6. Mr. Rajeev Shrivastava and Mr. Sumant Das, learned Senior Advocates appearing for the respective applicants submit that the respondent No. 1 has failed to comply with the terms and conditions mentioned in the agreement dated 16.03.2007 and has willfully breached the contract. The discrepancies of the respondent No. 1 against the agreement dated 16.03.2007 are as under:
 - a) As per clause 11 of the agreement dated 16.03.2007, the respondent No. 1 was liable to pay an advance amount to the applicants against their capital investment to the tune of Rs.1,01,00,000/- by 30.07.2007. However, the respondent No. 1 has

failed to pay the aforementioned amount to the applicants.

b) As per clause 14 of the agreement dated 16.03.2007 the respondent No. 1 has agreed to pay the balance consideration of the land to the applicants between 01.04.2007 to 30.09.2008 but the respondent No. 1 has to comply with this clause till date.

c) Apart from the non-payment of the respondent No. 1 against the land of the applicants, the respondent No. 1 has not only willfully breached the payment schedule agreed upon by the parties as per clause 30 of the agreement but also no interest was ever paid by the respondent No. 1 as stipulated in clause 17 of the agreement.

d) As per clause 21 of the agreement dated 16.03.2007 the parties had agreed to make any and all decisions regarding the working of the project in consonance with each other, however, the respondent No. 1 never consulted the applicants and made the decisions unilaterally which was detrimental for the project.

e) As per clause 40 of the agreement dated 16.03.2007 the respondent No. 1 was solely responsible to raise the building and thus it was upon the respondent No. 1 to arrange contractors, laborers as well as to procure all the materials and equipment that were needed for the construction, but the respondent No. 1 failed to depute an competent team of contractors, suppliers, laborers, etc. to complete the construction work in the agreed upon time frame due to which the buyers of the projects suffered and the goodwill of the applicants was hampered.

f) The respondent No.1 also failed to invest adequate funds for the construction of the project in scheduled time which caused great distress to applicants, and the applicants were left with no other option than to obtain loan from the bank for completing the project even

before the investment of both sides were at par, this action of the respondent No. 1 is in complete contradiction to clause 42 of the agreement dated 16.03.2007 which was agreed by the respondent No.1.

g) Due to delay and non-infusion of funds for development of the project by respondent No. 1 in terms of the agreement executed, this led to substantial delay in the completion of the project and thereby the applicants incurred substantial losses.

7. Learned Senior Advocates submit that out of the total land shown in Schedule I and II of the agreement of partnership dated 30.03.2007 only 3,60,590 sq. ft. as mentioned in Schedule I of the land was the capital contribution made by the applicants, subject to receipt of full consideration from the respondent No. 1. However, no registered document was executed in favour of the partnership firm for lack of receipt of full agreed consideration within stipulated time period. Against this land of 3,60,590 sq. ft., an amount of Rs.74,15,762/- was paid as interim capital to the applicants. On account of non-receipt of full consideration, the Schedule I land of 3,60,590 sq. ft was never registered in the name of the alleged partnership firm. Furthermore, the agreement dated 30.03.2007 having its nomenclature as partnership agreement provided for the ratio of profit and loss was fixed to be divided amongst the parties in following manner: Singhnia Buildcon Pvt. Ltd. 56%, Archees Real Estate 4% and Merlin Projects Limited 40%. From the execution of such agreements and till date though, the respondent No. 1 as a developer/building contractor was obliged to complete and take steps in accordance with the agreement as granted in its favor, however, it is absolutely evident from the records that they have failed and neglected to do so within 18 months of time. Time was always of essence in the agreement and therefore interest clause was also

incorporated for delay. In fact, time and again the applicants had called upon and have requested the respondent No.1-Merlin Projects Limited to complete the said project in terms of the layout approval, however, the same has fallen deaf ears. As on date the respondent No.1 could only complete construction on approximately 2,44,340 sq. ft of land by way of 7 Residential Blocks and there are still 3 more residential blocks of Phase I of the project which are yet not constructed by the respondent No. 1 on the total area of 3,60,590 sq. ft. relating to Phase 1 of the 'Singapore City' project at Kota, Raipur. The respondent No. 1 in an attempt to tarnish the goodwill of the applicants and to paint a negative image of the applicants made false allegations against the applicants stating that they both approached various brokers at Kolkata behind the back of the respondent No. 1 to commence another project at Kolkata while abandoning the one at Raipur. Furthermore, the respondent No. 1 also made a false allegation against the applicants that they trespassed in the office of the partnership firm and forcefully took all the books of account of the firm, however, the respondent No. 1 has not been able furnish any evidence to support the bald allegations made against the applicants. The acts of the respondent No. 1 are a clear indication of the *malafide* intent of the respondent No. 1. The respondent No. 1 by committing the aforementioned acts is simply trying to commence the arbitration proceedings at Kolkata as against the agreed venue and seat of, arbitration at Raipur as per Clause 46 of the agreement dated 16.03.2007, in order to gain an undue advantage over the applicants. On a combined and comprehensive reading of the Promoter Builder Agreement and the partnership agreements as executed between the parties hereto, it would be evident that the sole purpose of the execution of such agreements was for the purpose of developing the land as owned by the applicants herein which are situated at Kota, Raipur, Chhattisgarh.

Therefore, the only business of the partnership is for the development of the said land situated at Raipur only. Thus, breach of the agreement by the respondent No. 1 who has defected and continues to affect development of the land and the projects. It is worth noting that the development and construction work on the said land has been halted by the respondent No. 1 since 2012 and the respondent No. 1 has been in continuous breach of the agreements. All of a sudden, the applicants were served with a copy of an order dated 06.04.2024 along with an application under Section 9 of the Act of 1996, registered as Misc. Case (Com) 97 of 2024. The respondent No. 1 without having any just and probable cause filed an application under Section 9 of the Act of 1996 before the learned Commercial Court at Alipore, Kolkata on 03.04.2024 in order to frustrate and harass the applicants. The respondent No. 1 under the aforementioned application has invoked the arbitration clause mentioned in the agreement dated 30.03.2007 and has deliberately suppressed the existence of an arbitration clause under the agreement dated 16.03.2007. The respondent No. 1 did not approach the Court with clean hands and has suppressed material facts and was able to obtain an *ex-parte* ad-interim injunction order from the learned Commercial Court vide its order dated 06.04.2024. The applicants , upon coming into light regarding the malicious acts of the respondent. No. 1, filed an application for dismissal of the application filed under Section 9 of the Act of 1996 along with modification of the order dated 06.04.2024 as the respondent No.1 is neither suffering any irreparable loss or injury nor the balance of convenience is in the favor of the respondent No. 1. The applicants have further filed an objection to the application under Section 9 of the Act of 1996 whereby the applicants have clearly stated that the arbitration between the parties will be governed under the agreement dated 16.03.2007 as the said agreement was main agreement and the agreement

dated 30.03.2007 is a mere modality of the prior agreement.

- 8.** Learned Senior Advocates further submit that the respondent No. 1 in a further attempt to distress the applicants sent a notice, dated 25.04.2024, under Section 21 of the Act of 1996 nominating Hon'ble Justice Subhro Kamal Mukherjee as its nominee arbitrator. Upon receiving the notice, the applicants filed a reply on 28.05.2024 whereby the applicants have agreed for the dissolution of the partnership firm, however, it is pertinent to mention here that the respondent No. 1 in the notice dated 25.04.2024 has invoked the arbitration clause as per the agreement dated 30.03.2007 but the parties are to enter into arbitration as per clause 46 of the agreement dated 16.03.2007 as it is the main agreement and the agreement dated 30.03.2007 is an off shoot of the prior agreement. During the pendency of the proceedings under Section 9 of the Act of 1996, the respondent No. 1 filed an application under Section 11 which is registered as A.P. (Com) 636 of 2024 of Act of 1996 before the Hon'ble Calcutta High Court for appointment of an Arbitrator in accordance with clause 18 of the agreement dated 30.03.2007 and commenced the arbitration proceeding at Kolkata. The applicants sent a notice, dated 08.07.2024, under Section 21 of the Act of 1996 to the respondent No. 1 as the respondent No.1 has not only neglected to complete the construction work but also illegally terminated the agreement dated 16.03.2007 by making a clear intention of its act by not proceeding further with the construction work.
- 9.** Mr. Shrivastava and Mr. Das further submit that in response to the application filed before the Hon'ble High Court of Calcutta by the respondent No. 1 under Section 11 of the Act of 1996, the applicants have filed a reply whereby the applicants have clearly stated that the parties will be governed by the agreement dated 16.03.2007 and have also stated that the applicants have sent a notice under Section 21 of the Act of 1996 for

initiation of arbitration proceedings at Raipur. The respondent No. 1, in furtherance to the reply filed by the applicants, has filed an additional rejoinder before the Hon'ble Calcutta High Court whereby the respondent No. 1 has specifically denied that any dispute exists with regard to the agreement dated 16.03.2007 which is completely false and inconsistent with the actual factual matrix of the case. The respondent No. 1 is continuously changing its stand before different judicial forums, the respondent No. 1 before the Hon'ble Calcutta High Court has clearly stated that no dispute has arisen in pursuance to the agreement dated 16.03.2007, however, the respondent No. 1 has filed various caveats before the learned Court of First Civil Judge Class I and Class II, Raipur, learned Court of Second Civil Judge Class 1, Raipur, Learned District Judge, Raipur, learned Commercial Court, Raipur, learned Court of Ninth Civil Judge Class II, Raipur with regard to any litigation/application or suit being in respect of incomplete portions of Phase I of project Singapore City which clearly demonstrates that the respondent No.1 is well aware of the dispute arising out of agreement dated 16.03.2007. In view of the foregoing compelling circumstances, there is no effective remedy available to the applicants but to approach this Hon'ble Court for appointment of an independent and impartial Sole Arbitrator under Section 11 of the Act of 1996. As the agreement dated 16.03.2007 involves construction of real estate project in Raipur, Chhattisgarh, and the immovable properties are situated at Kota, Raipur within the jurisdiction of this Hon'ble Court and thus this Hon'ble Court has jurisdiction over the present dispute and has the authority to appoint a Sole Arbitrator/ Arbitral Tribunal under Section 11 of the Act of 1996. The applicants are invoking the arbitration clause as contained in the document dated 16.03.2007 for the reason that the breach as contemplated by the respondent no. 1 has resulted in loss/ damage to the applicants for

which the applicants have suffered immense monetary loss. The applicants are trying to resist the application under Section 11(6) of the Act of 1996 as filed by the respondent No. 1 before the Hon'ble Calcutta High Court on one of the ground that there was a consensus *ad idem* to the terms and conditions as well as the arbitration agreement of 16.03.2007 which is comprehensive and encompassing all terms of the transactions as compared to the arbitration agreement of 30.03.2007 which is for limited purpose. The other ground which the applicants have resisted and have objected to is that the arbitration clause as entered upon is not binding and is a void agreement inasmuch as the same has been entered upon by a partnership firm through Mrs. Meenali Singhania, which does not and cannot have the implied authority of the other partners. Learned Senior Advocates lastly submit that it would be in the interest of justice that an independent Sole Arbitrator/Arbitration Tribunal is appointed/constituted for adjudication of the disputes arising under the agreement between the parties.

- 10.** On the other hand, Mr. Abhishek Sinha, learned Senior Advocate appearing for the respondent No. 1-Merlin Projects Ltd. submits that these arbitration applications are thoroughly misconceived, misplaced, not maintainable and are liable to be dismissed *in limine* with exemplary costs. There is no arbitration agreement between the parties insofar as the dispute made out in the said application is concerned. The said application is an afterthought and the same has become infructuous and not maintainable in view of the final disposal of the respondent No.1's application under Section 11 of the Act of 1996, by the Hon'ble Calcutta High Court in AP(COM) No. 636 of 2024. Further, since the said application is under Section 11 of the Act, the respondent No. 1 would deal with only those allegations and/or contentions made in the said applications which are material, relevant and germane for

a due and proper adjudication. The said applications (even if the contents thereof are taken to be true and correct) is barred by and is not maintainable in facts or in law. The applications have been purportedly filed under Section 11 of the Act for appointment of a Sole Arbitrator/Arbitral Tribunal by purporting to invoke Clause 46 of the Promoter Builder Agreement dated 16.03.2007. Clause 46 of the said agreement is not and does not contain any valid or binding or subsisting arbitration agreement between the parties. The Hon'ble Calcutta High Court by an order dated 8.10.2024, while disposing of the respondent No.1's application under Section 11 of the Act [being AP(COM) No. 636 of 2024], inter alia, interpreted Clause 46 of the said agreement.

11. Mr. Sinha further submits that the AP (COM) No. 636 of 2024 was a prior application filed by the respondent No. 1 and both the applicants were a party thereto. As such, the decision rendered in the said order operates as *res judicata* between the parties and the applicants are estopped from contending to the contrary in the present proceeding. The said order was carried in appeal by the applicants before the Hon'ble Supreme Court by way of a Special Leave Petition being SLP (C) No. 26420 of 2024. By an order dated 15.04.2025, the Hon'ble Supreme Court was pleased to dismiss the aforesaid Special Leave Petition and refused to interfere with the said order. As such, it has become final and binding on the parties. Hence, these applications are not maintainable and the same are in abuse of process of law and of this Hon'ble Court. Without prejudice to the aforesaid preliminary objections as to the maintainability of these applications, they are also otherwise not maintainable and the reliefs as prayed therein cannot be granted by this Hon'ble Court. Pursuant to the said order passed by the Hon'ble Calcutta High Court, the learned Sole Arbitrator (appointed in terms of the said order) has entered upon the arbitral reference and the arbitration

proceedings between, inter alia, the parties have commenced and is at the stage of evidence. In any event, the said agreement was abandoned and given a go-bye to by the parties, which would be borne out from their subsequent conduct. After execution of the said agreement, the parties deliberated and decided not to proceed with the venture as contemplated under the said agreement (which was for joint development of a piece of land situated in Raipur, Chhattisgarh in a builder landowner relationship). Over the course of further negotiations, it was decided that they would form and constitute a partnership firm, which would continue the development and would have its registered office at Kolkata. In the aforesaid circumstances, the parties formed and constituted a partnership firm by entering into an Indenture of Partnership dated 30.03.2007. The respondent No. 1 and the applicants are the partners of the partnership firm, which has its registered office at Kolkata. The partnership firm was to carry on business under the name and style of 'M/s. Singhanian Merlin'. The Deed of Partnership was entered into at the registered office at Kolkata. The registered office of the partnership firm was obtained on license and the respondent No. 1 opened its office there at. Effectively and for all practical purposes, the ratio of profit sharing was equal between the respondent No. 1 on the one hand and the applicants on the other. In view of the fact that the registered office of the partnership firm is at Kolkata, the books of accounts of the firm were maintained there.

- 12.** Mr. Sinha draws attention of this Court to clause 11 of the partnership agreement which pertains to maintenance of books of accounts. The relevant portion of the same reads as under:

“11. BOOKS OF ACCOUNTS:

The usual books of accounts shall be kept properly posted up wherein shall be entered particulars of all money, goods and effects belonging to or owing in or by the partnership received,

sold or purchased in course of partnership business and such other transaction, matters and things relating to the said business as are usually entered in the books of accounts kept by persons engaged in the business of similar nature and such books of accounts together with all vouchers, letters, papers or writings concerned or belonging to the partnership except such as are to be kept at the bankers end shall be kept at the bankers and others shall be kept at the place of business of the partnership, each partner shall at all times have free access to and right to inspect and copy the same.”

- 13.** According to Mr. Sinha, the parties had further agreed that all the partners would have equal power of management. The duties of the partners were also defined. Clauses 13 and 14 of the Indenture of Partnership reads as under:

“13. MANAGEMENT:

All the partners shall have equal power of management although they may entrust the day-to-day management of the affairs of the business of the firm to anyone or more of their number as and when they say deem it necessary and expedient.

14. DUTIES OF PARTNERS:

i) Each partner shall:

a) Punctually pay, and discharge his/her separate debts and engagements and indemnify the other partners and partnership assets against the same and all the cost claims and demands in respect thereof.

b) At all times give the other partners true information and faithful explanations of all matters relating to the partnership within his knowledge and offer every assistance in his power to carry on the partnership.

ii) That no partner shall without the consent in writing of the other partners: a) Release or compound any debts owing to or claim of the partnership except in the usual course of the business.

b) Employ and money or effects of the partnership or except in the usual pledge the credit thereof business of the partnership.

c) Enter into any bond or become bailey, surety or security with or for any person or do or knowingly cause or suffer to be done

anything whereby the partnership property or any part thereof may be caused, attached extended or taken into execution, except in the usual course of business.

d) Assign, mortgage, or charge his or her share in the partnership or any part thereof or make any other person a partner therein without the consent of the other partners.

iii) No partner shall do or suffer anything harmful to the interest of the partnership.”

- 14.** There are effectively two partners of the firm i.e. the respondent No. 1 on the one hand and the applicants on the other, each having equal power of management and control as the other. Even though the said firm was principally formed for the purpose of carrying out development of real estate, it was agreed that the said firm would carry on other business as would be mutually agreed between the parties. In fact, the parties had discussed and agreed that the firm could very well and profitably carry on further or other ancillary or allied businesses. The parties had as such decided that even though the business of the firm would be mainly that of development of the real estate project as described in the partnership agreement, the parties would explore entering into further and/or other businesses. The parties had also agreed that while the first project would be at Raipur, Chhattisgarh, the parties would initiate other real estate projects at Kolkata. The respondent No. 1 is a reputed real estate developer in Kolkata and the applicants had insisted on the partnership, so that the experience and goodwill of the respondent No.1 could be drawn upon and fresh business and/or other developments launched at Kolkata, which was an area, the applicants wanted to enter. In fact, there were numerous negotiations that are being carried out for the purpose of commencing real estate development projects at Alipore, Tollygunge and Behala, all outside the jurisdiction of this Hon'ble Court. Particulars of such proposed projects, which are in the course of negotiations as detailed in paragraph 't' of the return. In fact, an advanced

stage of negotiation has been reached between the brokers dealing with such properties and the partnership firm. It can even be said that there is an informal arrangement and/or agreement that has been reached in-principal. Finality is being intentionally delayed by the applicants on the pretext that they did not have the necessary capital available immediately. The first project of the said firm is at Raipur, Chhattisgarh. There has been progress in respect of this project, known as Singapore City. After the parties entered into the partnership and the partnership firm was constituted, the parties decided on the request of the applicants that the accounting procedure followed would be on the terms contained in the said agreement. The Deed of Partnership was amended by a further document dated 31.03.2007 by which the name of the partnership firm was changed to 'Singhania Merlin Estate'. In the document dated 31.03.2007, there is a reference to an agreement dated 17.03.2007 in the 2nd and 3rd recital. This is an obvious typographical error and should be read as the said agreement. There is a similar inadvertent error in the document dated 31.03.2007. There is no document dated 17.03.2007 that has been executed by the parties. When the parties had executed the first agreement dated 27.11.2005, the premised financials were as follows:

- (i) The applicants had purchased land ad measuring about 27 acres and there was further land contiguous to or connected with the said 27 acres of land, in respect of which, agreements for purchase had been entered into but execution of indenture of sale was pending. The total extent of the land was 8,37,613 sq. ft.
- (ii) The land was valued at Rs.160/- per sq.ft. and would be transferred to a joint pool formed by the respondent No. 1 on the one hand the applicants on the other. This would be the capital contribution of the applicants.

(iii) The respondent No. 1's capital contribution would be brought as recorded in the succeeding paragraph.

(iv) As regards the cost of construction and the utilization of the money received from allotment or sale of the land, it was agreed that the first party shall put further money in the pool as a part of investment for further planning, sanctioning development of the project and shall go on investing till they match the value of the land as mentioned as above.

A. Once the construction starts, the party shall also start booking of constructed space and receive advances against the same in the pool.

B. Out of the advances received, 25% of the same will be utilized for construction and development of the project and 75% will be utilized for payment of the second party to equalize the investment at par with the first party.

C. Once the investments of both the parties are equal in the pool account, both the first and second parties shall invest further sums of money in developing the property in equal ratio. Similarly, they shall also be entitled to withdraw the surplus amounts in equal ratio.

15. Thus, it is evident that the respondent No. 1 was to introduce the funds for the development of the project as its capital contribution. The applicants were to introduce the land as its capital contribution, at a price agreed between the parties, as mentioned above. Upon booking of constructed spaces and advances being received, 25% of the same was to be utilised for construction and development of the project. The remaining 75% of the advances received was to be utilised for payment to the applicants to equalise their investment with that of the respondent No. 1. In this way and with the continued investment by the respondent No. 1 and continued receipt of funds by the applicants from the advances received from booking,

the investments of both parties were to reach parity. The parties were to thereafter share profits and contribute further capital in equal proportion. By 15.03.2007, the applicants had acquired 8,37,613 sq.ft. of land, which constituted Phase I and Phase II of Singapore City. The applicants had started acquiring land on which Singapore City is being built in the year 2003-2004 and by 2005, bulk of the land had been acquired. By 15.03.2007, the land was completely consolidated. It was contemplated that the construction would be in two phases i.e. Phase I and Phase II. The land in such Phase I and Phase II is comprised is the capital contribution by the partnership firm. In fact, for most of the land acquired, the applicants have been reimbursed, by the partnership firm, while bringing parity to the capital contribution of the two partners *i.e.* the respondent No. 1 and the applicants. In fact, the parties had agreed that the respondent No. 1 would infuse necessary sums into the partnership firm and a part of such sums, would be taken out by the applicants, to bring parity to the capital contributions of the respondent No. 1 and the applicant, as stated above. The land may be held by the applicants in their individual names, but the same constitutes partnership property. This is the admitted position. The total land has been transferred to the joint pool and is comprised in Phase I and Phase II of Singapore City (18,37,613 sq.ft.). The total acquisition cost is Rs.13,40,18,080/- and the same is treated as the capital contribution of the applicants. The land continues to remain in the names of the applicants for operational convenience, for obtaining approvals, mutation, permissions etc. and to save time. In any event, the land being the capital contribution of the applicants became the property of the partnership firm, for all purposes. Upon the parties commencing development, in or around March, 2008, it was discovered that certain additional land aggregating to about 0.1948 hectares was required to be acquired by the partnership firm. The same was

done and the arrangement between the parties is recorded in an agreement dated 31.03.2008. The purchase was with the funds of the said partnership firm. The purchase was done in the names of the applicants in view of the fact that the earlier 8,37,613 sq.ft. of land were also standing in their names and for operational convenience in obtaining sanctions, approvals and permissions. After the preparatory and preliminary work, actual construction work at the project commenced from 2007. It had been decided that there would be two phases of the project. The first phase of the project was on 360590 sq.ft. of land and would comprise of 10 residential building and a commercial block. The second phase of the project was on 477113 sq.ft. Ultimately, out of 10 residential and 01 commercial block, comprised in Phase I, 07 residential blocks have been constructed. Three residential blocks and a commercial block remains to be constructed. Phase II of the project has not been commenced. Construction activity is now at a standstill, in view of the conduct of the applicants and/or in view of their unwillingness. The land which is comprised in Phase II and the land on which construction of the same and of the three towers and the commercial block yet to be built in Phase I of the Raipur project, as described in Annexure-R/12. This land is presently substantially vacant and is the property of and under the control of the partnership firm. The parties have also executed a further document dated 31.03.2008. It is material to state that when the parties executed the document dated 31.03.2008, they realized the inadvertent error of mentioning the date of the said agreement as 17.03.2007, in the two documents dated 31.03.2007. The respondent No. 1 has made a total investment of a sum of Rs.16.67 crores and has withdrawn a sum of Rs.12.75 crores, from the partnership firm, which would leave apart a sum of Rs.3.91 crores in the partnership firm. The applicants have invested a sum of Rs.7.59 crores. In addition, the value of the 837613

sq.ft. of land of the respondent No. 1 is Rs.13.40 crores (as per the agreed valuation of the land at Rs.160/- per sq.ft.). The cumulative investment of the applicants is therefore Rs.21 crores. Out of this sum of Rs.21 crores, the applicants have withdrawn a sum of Rs.18.01 crores. Therefore, the capital investment of the applicants in the said firm is a sum of Rs.2.98 cores while the respondent No. 1's contribution is Rs.3.91 crores. For the purpose of tax planning and for their benefit, the applicants had requested that the value of the land be treated at book value. The respondent No. 1 had agreed to the same. It is for this reason that the value of the land, which is the applicants' capital contribution is treated as book value. If the balance sheets of the firm are considered, the respondent No.1's capital contribution would be of a much higher percentage than that of the applicants having regard to the request of the applicants that the value of the land be treated at book value and not at agreement value. The lands at Raipur (Annexure-R/12), is the property of the partnership firm. The applicants as partners of the firm are not entitled to deal with or utilize the said asset without the respondent No. 1's consent or in a manner contrary to what had been agreed between the parties. Apart from being utilized or used for completion of the project, the lands mentioned in Annexure-R/12, cannot be utilised for any other purpose whatsoever. In or around early 2024, it had become apparent that the applicants were not interested to complete the Raipur project or commence a new project at Kolkata. All activity of the partnership firm was stopped and/or has come to a standstill. The applicants have become totally non-committal. Moreover, upon enquiry being made, it has been learnt that the applicants are interested to develop and/or sell and/or deal with the partnership property, in connivance with a third party. The fact that the applicants are acting in close conjunction with third parties would be evident that the club building at the project (which is an asset of the partnership

firm) has been, without the knowledge or consent of the respondent No. 1, handed over to a third party. The respondent No. 1 has obtained a copy of the agreement which has been executed without its knowledge or consent. The respondent No. 1, through Mr. Jagdish Baldwa called upon Mr. Subodh Singhania, the Director of the applicant and had discussed the matter and requested for resolving all pending issues including completing the Raipur project and proceeding with development of the Kolkata projects. The applicants refused to discuss or even to sign the Balance Sheet of the said firm for the year ended 2022-2023. The intention of the applicants is to deal with the partnership firm's property. The applicants have started preliminary work for making construction for the purpose of letting out on land which abuts the main road, which had been designated as the commercial block in Phase I. The same is the situation in respect of land comprised in Phase II. This is prime land and would fetch large rents, which is why the applicants are acting in the said manner. Such act on the part of the applicants is totally without the respondent No. 1's consent and utilisation of partnership property for their own purpose. The intention of the applicants is to not develop phase II of the Raipur project or complete development of Phase-I of the Raipur project jointly with the respondent No. 1 or in the partnership firm.

- 16.** Mr. Sinha further submits that the applicants are also acting wrongfully in respect of the registered office situated at Kolkata, outside the jurisdiction of this Hon'ble Court and the Branch Office at Raipur, which is situated at the mezzanine floor of the Club, Singapore City, and constitute property of the partnership firm. The applicants are sending representatives who are discouraging the respondent No. 1's representatives from occupying the said offices. Moreover, in or around 22.03.2024, the applicants have sent representatives who had carried away the entire books and records of the

said firm. The respondent No. 1 had lodged a complaint with the local Police Station at Bhawanipore, Kolkata for the same. However, it is material that the applicants have the soft copies of the entire accounts of the firm and have access to the tally software. While removal of the physical accounts is not complete exclusion of the respondent No. 1 from the books and records of the partnership firm, it is an act of the applicants which would suggest that their intention is to exclude the respondent No. 1 completely from the firm. It is also anticipated that the applicants and their representatives and men, agents or assigns would encroach upon the registered office of the firm situated at Kolkata or prevent the egress or ingress of the respondent No. 1 in respect thereof. It is also possible that even though the partnership firm has a license in respect of the said office at Kolkata, the applicants may incorrectly deal with the property by misrepresenting themselves to be owners thereof. In respect of the properties mentioned in Annexure-R/8, the partnership firm is actively negotiating for the purpose of entering into agreements for future project. In fact, negotiations with the owners of these properties had reached an advance stage. At the present juncture, it has been noticed that the applicants are independently trying to take over the negotiations with the brokers authorized to negotiate on behalf of the owners of these properties. It appears that the intention of the applicants is to deprive the partnership firm and independently enter into development agreements with the owners of the properties mentioned in Annexure-R/8. The same would be interfering with the business of the partnership firm. The applicants cannot engage in activity which is detrimental to the business of the partnership firm. The respondent No. 1 is therefore entitled that an order of injunction be passed restraining the applicants from independently negotiating or entering into any arrangement or agreement with the owners of the property situated under R. S./L. R. Dag Nos. 2581, 2581/2734,

2581/2735, 2583, 2583/2727, 2584, 2584/2728, 2584/2729, 2584/2730, 2584/2731, 2520/2732 and 2520/2733, under Mouza Parui, J. L. No. 3, Police Station Behala, under Maheshtala Municipality Ward No. 14, District South 24 Parganas and property premises No. 37/1, Diamond Harbour Road, Police Station South Port, within the Kolkata Municipal Corporation Ward No. 79, Kolkata-700027, District South 24 Parganas, in respect thereof or from attempting to procure a breach of the informal understanding which has been reached between the said owners and the partnership firm in any manner whatsoever. There is a valid, binding and subsisting arbitration contained in the partnership deed dated 30.03.2007, being Clause 18 thereof, which reads as under:

"... All disputes which arise between the partners of their respective personal representatives whether during or after the determination of the partnership or whether in relation to the interpretation of these presents or to any act or omission of any party to the dispute or either of these or in relation to any other matter whatsoever touching the partnership affairs shall be referred to arbitrators, one to be nominated by each party in difference and if the arbitrators so appointed differ they will refer the matter to an UMPIRE to be chosen by the arbitrators and every such reference shall be deemed as an Arbitration under the Indian Arbitration and Conciliation Act, and the provision of the said Act or statutory modification thereof for the time being in force shall apply..."

17. Mr. Sinha submits that in the aforesaid facts and circumstances that the respondent No. 1 was constrained to file an application under Section 9 of the Act being Misc. Case (Arb) No. 97 of 2024 before the Learned Commercial Court at Alipore praying for various relief(s). The learned Commercial Court at Alipore, by an ex parte ad interim order dated 06.04.2024, granted an interim injunction in terms of prayer (a) of the said application. The applicants had preferred an application for vacating the

order dated 06.04.2024, inter alia, on the ground of jurisdiction of the learned Commercial Court at Alipore to which the respondent No. 1 had filed its written objection. A written objection has also been filed by the applicants to the respondent No. 1's Section 9 application to which the respondent No. 1 had filed its affidavit-in-reply. Allegations and/or statements which have been made by the applicants in their vacating application as also to the written objection to the respondent No.1's Section 9 application are all false, baseless and incorrect. The aforesaid *ex parte* ad interim order dated 06.04.2024 was extended from time to time by the learned Commercial Court at Alipore, Kolkata, till 24.04.2025. In view of the constitution of the Arbitral Tribunal pursuant to the order of the Hon'ble Calcutta High Court, the learned Commercial Court at Alipore, Kolkata disposed of Section 9 application of the respondent No. 1, by an order dated 24.04.2025. The respondent No.1 has also invoked the arbitration agreement as contained in the partnership deed dated 30.03.2007 by way of a notice dated 25.04.2024 issued under Section 21 of the Act of 1996. In view of the conduct of the applicants, the respondent No. 1 treated the said partnership to be a partnership at will and by way of a notice dated 25.04.2024 had dissolved the same and alternatively, recorded that the said partnership is required to be dissolved by an award to be passed by the learned Arbitrator. The applicants responded to the said notice dated 25.04.2024 by a letter dated 28.05.2024. The contents of the letter dated 28.05.2024 are untrue and incorrect and the same are denied and disputed. Since the applicants had refused to give their consent for constituting an Arbitral Tribunal for the purpose of adjudicating the aforesaid disputes between the parties, the respondent No. 1 was constrained to file the aforesaid prior application under Section 11 of the Act before the Hon'ble Calcutta High Court, being AP (COM) No. 636 of 2024. Both the applicants had filed their affidavits-in-

opposition to the aforesaid application of the respondent No. 1. The respondent No. 1 had filed its affidavits-in-reply to the aforesaid affidavits-in-opposition. As would be evident from the statements made in the aforesaid affidavits-in-opposition, the applicants had adopted an identical stand before the Hon'ble Calcutta High Court as to the scope, purport and effect of clause 46 of the said agreement. By the said order, such contentions of the applicants were rejected by the Hon'ble Calcutta High Court. Such reasoning of the Hon'ble Calcutta High Court was affirmed by the Hon'ble Supreme Court of India by its order dated 15.04.2024. Further, the subject matter of the said agreement and the partnership agreement (being certain plots of land situated in Raipur, Chhattisgarh) are one and the same. Furthermore, with the disposal of the aforesaid prior application by the Hon'ble Calcutta High Court (which was between the same parties and which has been confirmed and upheld by the Hon'ble Supreme Court) and the consequent constitution of an Arbitral Tribunal pursuant thereto, which is presently in seisin of the aforesaid common subject matter, there is no question of allowing the said application at the present juncture. At the present juncture, the learned Sole Arbitrator (appointed pursuant to the said order) is presently adjudicating the respondent No.1's application under Section 17 of the Act in respect of the self-same subject matter. In any event, the said agreement has not been given any effect to and the same has been superseded by the Indenture of Partnership dated 30.03.2007 and, in the alternative, the same has merged with the aforesaid indenture. Clause 46 of the said agreement is neither valid nor binding and/or subsisting and no effect thereto, can at all be given. Furthermore, no dispute can be said to have arisen under the said agreement. Therefore, the question of referring any dispute allegedly arising under the said agreement to arbitration, does not and/or cannot arise. Consequently, the question of

any Arbitrator being nominated or appointed for adjudication of any alleged disputes in terms of the said agreement also does not arise.

- 18.** According to Mr. Sinha, the present petitions are an afterthought and the same had been filed as a counterblast to the respondent No. 1's application under Section 11 of the Act, which had been filed before the Hon'ble Calcutta High Court prior to the filing of these petitions. The present petitions have been filed with a vexatious, harassive, mala fide and oblique motive of defeating the arbitral proceedings which, at the time of filing of the said application, were to arise out of respondent No. 1's application under Sections 9 and 11 of the Act of 1996. As such, any further continuation of the said application would be illegal, in violation of the aforesaid orders of the Hon'ble High Court and the Hon'ble Supreme Court (which have been passed between the same parties and in respect of the same subject matter) and also in abuse of process of law and of this Hon'ble Court. In the aforesaid facts and circumstances, this Hon'ble Court does not have the jurisdiction to entertain the said application and the same deserves to be dismissed *in limine* and with exemplary costs.
- 19.** Placing reliance on the rejoinder filed, Mr. Shrivastava as well as Mr. Das, learned Senior Advocates appearing for the applicants controvert the submissions advanced by Mr. Sinha, learned counsel for the respondent No. 1.
- 20.** I have heard learned counsel appearing for the parties, perused the pleadings and materials available on record.
- 21.** The applicants have filed these petitions seeking appointment of Sole Arbitrator in view of Section 46 of the agreement entered into between the parties on 16.03.2007.
- 22.** For better appreciation of the issue, clause 46 of the agreement dated 16.03.2007 is quoted hereinbelow:

“(46) यह कि उभयपक्ष के मध्य किसी भी तरह का कोई विवाद उत्पन्न होने पर उस पर कार्यवाही एवं सुनवाई केवल रायपुर में ही होगी तथा सर्वप्रथम निराकरण एकाकी पंच श्री पुखराजी जी जैन द्वारा विवाद का निराकरण अधिकतम तीन माह की अवधि में किया जावेगा। सुलह, मध्यस्थता एवं सुलह अधिनियम 1996 के प्रावधानों के तहत किये जायेंगे। पंच द्वारा विवाद का निराकरण करने से इंकार किए जाने पर अथवा अपनी असमर्थता व्यक्त करने पर विवाद का निराकरण व्यवहार न्यायालय रायपुर से किया जावेगा।”

- 23.** According to the learned counsel for the applicants, the issue before the Hon’ble Calcutta High Court which was raised by the respondent No. 1 was with respect to dissolution of partnership firm and the issue involved in the present applications are different. According to the applicants, for different agreements, separate arbitration proceedings can be initiated and the issue raised by the respondent No. 1 and the issue raised by the applicants herein are different arising out of different agreements entered into between the parties. It is an admitted position between the parties that in three separate agreements were entered into.
- 24.** It would be beneficial to take note of the order passed by the Hon’ble Calcutta High Court, in the petition filed by the respondent No. 1 being AP-/COM/636/2024, on 08.10.2024, the relevant portion of which reads as under:

“Upon a perusal of the arbitration clause and the connected documents annexed to the application, it is evident that there is an arbitrable dispute between the parties.

Since the said dispute is covered by the arbitration clause in the agreement between the parties as well as the issue is otherwise arbitrable, there cannot be any impediment in referring the matter to arbitration.

At this juncture, learned counsel appearing for the respondents belatedly seeks an adjournment in the matter. It is also sought to be projected that in Clause 46 in an agreement between the parties dated March 16, 2007, it is provided that

the Raipur Civil Courts shall have territorial jurisdiction over the matter.

Clause 46, which is relied on by the respondents, is a part of one of the agreements between the parties, being a development agreement. The said clause provides that if any dispute arises between the parties, then the proceedings and hearing of that shall only be at Raipur and at first, there shall be conciliation by the sole arbitrator named therein within a maximum period of three months under the provisions of the Arbitration and Conciliation Act, 1996. If the Arbitrator refuses to resolve the dispute or expresses his inability to do so, then the said dispute shall be decided by the Civil Courts at Raipur.

In view of there being conflicting clauses in two documents, the development agreement and the partnership deed, the one which is more comprehensive with regard to the parties' intention to refer the dispute to Arbitrator ought to be taken as the guideline for the purpose of deciding an application under the Arbitration and Conciliation Act, 1996. Clause 46 mentions a named person as a "sole Arbitrator"; however, the function designated for such person is not arbitration but conciliation between the parties.

As such, it cannot be said that the arbitral seat has been designated to be in Raipur. That apart, it has been stated thereafter in Clause 46 of the agreement relied on by the respondents that on the failure of the designated person to resolve the dispute or on his expression of inability to do so, the dispute shall be decided by the Civil Courts, Raipur.

The decision of a dispute by a Civil Court, by no stretch of imagination, can be deemed to be an arbitral proceeding.

Hence, the argument of the respondents that the arbitral seat has been designated in Raipur is not tenable in the eye of law or on the factual matrix of the case as well.

Thus, we have to fall back upon Clause 18 of the partnership agreement, which is the primary agreement within the conspectus of which the present dispute has arisen, for the purpose of ascertaining whether any particular place has been designated as the seat of arbitration. A perusal of Clause 18 of

the same clearly shows that no such seat has been designated at all.

Hence, the provisions of Sections 16 to 20 of the Code of Civil Procedure would apply. Going by the said standard, as mentioned earlier, the registered office of the partnership firm is in Kolkata as well as a part of its assets/properties are located within the territorial jurisdiction of this High Court. Thus, this Court has territorial jurisdiction to entertain and decide the present application under Section 11 of the 1996 Act.

In such view of the matter, there cannot be any hindrance to the matter being referred to arbitration.

Accordingly, AP-COM/636/2024 is allowed on contest, thereby appointing Justice Alope Chakrabarti, a retired Judge of this Court and the Allahabad High Court, as the sole Arbitrator to resolve the disputes between the parties, upon a declaration being obtained from him under Section 12 of the Arbitration and Conciliation Act, 1996.”

(emphasis supplied)

- 25.** As per the respondent No. 1, the applicants herein had challenged the order dated 08.10.2024 passed by the Calcutta High Court wherein it was observed that clause 46 provides for conciliation between the parties and not arbitration. However, the said challenge has been turned down by the Hon'ble Apex Court in SLP(C) No. 26420/2024 meaning thereby that the finding of the Calcutta High Court that clause 46 of the agreement dated 16.03.2007 is in respect of conciliation proceedings and not arbitration, has attained finality. Mr. Sinha has also submitted that the conciliator Mr. Pukhraj Jain is ineligible for the conciliation proceedings and as such, the only recourse available to the applicants in view of clause 46 of the agreement is to approach the competent civil court. The fact of Mr. Jain being ineligible for the conciliation proceedings has not been controverted by the learned counsel appearing for the applicants. It has further been submitted by Mr. Sinha that the arbitration proceedings at Kolkata is at the stage of evidence and the applicants cannot be allowed to initiate a fresh

and separate arbitration proceedings at Chhattisgarh and that too, when clause 46 of the agreement dated 16.03.2007 does not provide for arbitration as held by the Calcutta High Court and affirmed by the Apex Court.

26. The dismissal of the SLP by the Hon'ble Apex Court, filed by the applicants, affirms the order passed by the Hon'ble Calcutta High Court that clause 46 of the agreement dated 16.03.2007 does not provide for arbitration proceedings but in fact, conciliation proceedings. Since Mr. Pukhraj Jain is ineligible for conducting the conciliation proceedings, then in terms of clause 46 of the agreement, the only recourse available to the applicants is the civil court at Raipur.
27. Once it has been conclusively held that Clause 46 does not constitute an arbitration agreement but only provides for conciliation followed by recourse to the Civil Court, the jurisdiction of this Court under Section 11 of the Act of 1996 cannot be invoked and the present arbitration petitions are liable to be dismissed.
28. Accordingly, **ARBR No. 22 of 2024** and **ARBR No. 23 of 2024** stand **dismissed**. However, the applicants are at liberty to avail such remedies as may be available to them in law in accordance with Clause 46 of the agreement dated 16.03.2007.

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Head Note

A clause in an agreement cannot be treated as an arbitration agreement merely because it employs the expression “arbitration”. The Court must examine its true nature and intent, and where such clause, in substance, provides only for conciliation or amicable settlement followed by recourse to civil courts, the Court may refuse to appoint an Arbitrator.