DLF HOME DEVELOPERS LIMITED

v.

RAJAPURA HOMES PRIVATE LIMITED & ANR.

(Arbitration Petition (Civil) No. 17 of 2020)

SEPTEMBER 22, 2021

[N.V. RAMANA, CJI AND SURYA KANT, J.]

Arbitration and Conciliation Act, 1996 – s.11(6) r/w s.11(12) – Appointment of Arbitrator – In terms of Share Purchase Agreements, the parties entered into Construction Management Agreements – Both sets of agreements contained arbitration clauses not similar to one another – Disputes arose – Respondents refused to appoint Arbitrator under the Construction Management Agreements – Present petitions filed by the Petitioner for appointment of a sole arbitrator for resolution of all disputes arising from the Construction Management Agreements – Held: Notwithstanding certain overlaps between the Share Purchase Agreements and Construction Management Agreements, their object and field of operation is different and distinct – It cannot be accepted outrightly that the respective Share Purchase Agreements are the 'principal agreements governing the transaction' between the parties or that the present disputes can be resolved solely under the arbitration clause contained therein – Neither party pleaded the infringement of the core provisions of the said Agreements, thus it cannot be accepted that the subject controversy falls within the ambit of Clause 9 thereof and can be adjudicated only under the rules of Singapore International Arbitration Centre (SIAC), with seat and venue at Singapore – Further, parties have neither denied that there is no arbitrable dispute between them nor have they challenged the existence of the arbitration clause(s) in the Construction Management Service Agreements – The nature of disputes that have arisen between the parties can thus, be adjudicated in the arbitral proceedings u/Clause 11 of the Construction Management Agreements – Primary twin-test u/s.11(6) satisfied by the Petitioner – Sole arbitrator appointed to resolve all disputes between the parties.

A *Arbitration and Conciliation Act, 1996 – ss.11, 11(6-A) – Scope of interference by Court at the stage of referral – Held: Courts are obliged to apply their mind to the core preliminary issues within the framework of s.11(6-A) – Thus, even when an arbitration agreement exists, it would not prevent the Court to decline a prayer for reference if the dispute does not correlate to the said agreement – Arbitration and Conciliation (Amendment) Act, 2015 – Arbitration and Conciliation (Amendment) Act, 2019 – s.11(6-A).*

Allowing the petitions, the Court

HELD 1. The jurisdiction of this Court under Section 11 is primarily to find out whether there exists a written agreement between the parties for resolution of disputes through arbitration and whether the aggrieved party has made out a prima facie arbitrable case. The limited jurisdiction, however, does not denude this Court of its judicial function to look beyond the bare existence of an arbitration clause to cut the deadwood. This Court or a High Court, as the case may be, are not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section 11(6-A) of the Act. Such a review is not intended to usurp the jurisdiction of the Arbitral Tribunal but is aimed at streamlining the process of arbitration. Therefore, even when an arbitration agreement exists, it would not prevent the Court to decline a prayer for reference if the dispute in question does not correlate to the said agreement. [Paras 18, 19][14-B-C; 16-A-C]

2.1 In terms of Clauses 3.1, 6.1 and 6.2 of Share Purchase Agreements, the parties entered into two Construction Management Service Agreements dated 25.01.2017. The 'Share Purchase Agreements' as well as the 'Construction Management Agreements' are subsisting and have not been repudiated by the Parties. Both sets of agreements contain arbitration clauses that are not similar to one another. Upon perusing the Share Purchase Agreements, it is clear that the primary purpose of these agreements is to effectuate the change of ownership of Respondent No.1 and the Begur Company from DHDL to

Resimmo PCC. The Rajapura SPA and the Southern Homes SPA as per their Clause 6.1 and 6.2, do provide for the completion of the respective residential projects as a post-closing obligation, however, these construction obligations had to be fulfilled in accordance with the terms of the 'Construction Agreements'. The very purpose of the RCMA and SCMA was, on the other hand, to operationalise the manner in which the Petitioner-DHDL would achieve the said construction related obligations. The construction agreements not only contemplate the scope of services to be provided by the petitioner but also lay down the obligation on Respondent No.2 to pay "Fee" to the Petitioner-DHDL upon completion of the residential projects. A prima facie reading of 'Share Purchase Agreements' and `Construction Management Agreements', does suggest that notwithstanding certain overlaps between these agreements, their object and field of operation is different and distinct in nature. It is therefore difficult to accept it outrightly that the respective Share Purchase Agreements are the 'principal agreements governing the transaction' between the parties or that the present disputes can be resolved solely under the arbitration clause contained therein. [Paras 24-26][20-D-E; 23-B-G]

2.2 The dispute sought to be referred to arbitration by the Petitioner DHDL pertains to non-deposit of agreed amount by Respondent No.2 and resultant payment thereof as 'Fee' which the Petitioner claims in terms of clause 4 of RCMA/SCMA. Whether or not the Petitioner has complied with the 'condition precedent' under Rajapura SPA and thus has become entitled to 'fee' as per clause referred to above, is purely a question of fact to be determined by the Arbitral Tribunal. The arbitration Clause 9 of the Rajapura SPA/Southern Homes SPA does not have any overriding effect and is in no way broader or wider when compared to Clause 11 of the RCMA/SCMA. Therefore, even if it is assumed that the present differences between the parties are incidental to the terms of the Share Purchase Agreements, it is difficult to construe that Clause 9 of Share Purchase Agreements contemplates adjudication of the issues that are "connected with" or are "in relation" to the subject matter of the Share Purchase Agreements. [Paras 27, 29][23-H; 24-A-B, E-G]

A *Olympus Superstructure Pvt. Ltd. v. Meena Vijay Khetan and Others* **(1999) 5 SCC 651: [1999] 3 SCR 490 – distinguished.**

2.3 If the Respondent(s) plea, that present dispute(s) should be arbitrated only under the Rajapura SPA/Southern Homes SPA B **is accepted at face value, the eventual result would be that any and all disputes relating to the Petitioner's construction obligation would be arbitrable under the provisions of the Share Purchase Agreements only. But then, what would be the purpose of having a separate arbitration clause 11 under the RCMA/SCMA? The parties do not seem to have rendered the arbitration clause in** C **RCMA and SCMA as redundant, more so when these are the agreements later in time. The scope of the arbitration clause in Rajapura SPA/Southern Homes SPA is limited to issues relating to the agreement's primary subject matter, i.e., any dispute arising out of the transaction of sale and purchase of shares. The** D **provisions of the RCMA/SCMA, and the arbitration clause therein, would as a logical corollary then be applicable to any dispute/difference concerning the performance of the construction related obligations and deposit of agreed amount by Respondent No.2 or payment thereof to the Petitioner-DHDL. The Petitioner** E **has not once alleged in these Petitions that the dispute sought to be referred to Arbitration emanates from the Share Purchase Agreements. As far as the share transactions between the Petitioner and Respondent No.2 is concerned, it has been unequivocally submitted on behalf of the Petitioner that the purchase of shares by Respondent No.2 has been duly completed.** F **There is nothing on record to suggest that Respondent No.2 is aggrieved by non-compliance, deviation or breach of promise to sell its shares by the Petitioner-DHDL. On the contrary, the counter-affidavit filed by the Respondent(s) indicates that the sale of the shares of Respondent No.1 and the Begur Company have** G **been completed. Still further, it is not the case that Ressimo PCC has already invoked Clause 9 of the Rajapura SPA or of the Southern Homes SPA. Thus, when neither party has pleaded the infringement of the core provisions of the Share Purchase Agreements, it is difficult to accept outrightly that the subject-controversy falls within the ambit of Clause 9 of the said**

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agreements and can be adjudicated only under the rules of SIAC, with seat and venue at Singapore. [Paras 30, 31][24-G-H; 25-A-F]

2.4 The Parties have neither denied that there is no 'arbitrable dispute' between them nor have they challenged the existence of the arbitration clause(s) in the Construction Management Service Agreements. The primary twin-test envisioned under Section 11(6) of the Act has been satisfied by the Petitioner-DHDL, thus the instant application(s) are maintainable. The nature of disputes that have arisen between the parties, thus, can be adjudicated in the arbitral proceedings under Clause 11 of the RCMA and SCMA. The RCMA and SCMA, though interlinked and connected, are still two separate agreements. If on appreciation of the facts and law, the arbitrator finds that the 'real dispute' between the parties stems from the Share Purchase Agreements, the arbitrator shall be free to wind up the proceedings with liberty to the Parties to seek redressal under the rules of Singapore International Arbitration Centre (SIAC). The case of the Respondent(s) is that the Petitioner has committed breaches under both RCMA as well as SCMA, and that the genesis of the disputes lies in separate and distinct facts. Save where the parties have resolved to the contrary, it would be inappropriate to consolidate the proceedings originating out of two separate agreements. However, since the Fee Agreement provides that the "Fee" can only be calculated after taking into consideration various financial components of both the Rajapura Homes Projects and the Southern Homes Project, it would be necessary for the sake of avoiding wastage of time and resources, and to avoid any conflicting awards, that the disputes under Arbitration Petition No.17 and Arbitration Petition No.16 are referred to a sole Arbitrator. Sole arbitrator appointed to resolve all disputes/differences between the parties. [Paras 32, 33, 35 and 36][25-F-H; 26-A-B; E-H]

Duro Felgura, S.A. v. Gangavaram Port Limited **(2017) 9 SCC 729 : [2017] 10 SCR 285;** *Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited* **(2019) 9 SCC 209 : [2019] 5 SCR 579;** *Mayavati Trading Private Limited v. Pradyuat Deb*

Burman **(2019) 8 SCC 714 : [2019] 12 SCR 123;** *Vidya Drolia and Others v. Durga Trading Corporation* **(2021) 2 SCC 1 : 2021 (6) JT 460;** *Uttarakhand Purv Sainik Kalyan Nigam Limited v. Northern Coal Field Limited* **(2020) 2 SCC 455;** *P.R. Shah, Shares and Stock Brokers Private Limited v. BHH Securities Private Limited and Others* **(2012) 1 SCC 594 : [2011] 16 SCR 87;** *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund and Ors* **2021 SCC Online SC 268 – referred to.**

Case Law Reference

[2017] 10 SCR 285	**referred to**	**Para 13**
[2019] 5 SCR 579	**referred to**	**Para 13**
[2019] 12 SCR 123	**referred to**	**Para 13**
[2011] 16 SCR 87	**referred to**	**Para 14**
[1999] 3 SCR 490	**distinguished**	**Para 16**

CIVIL ORIGINAL JURISDICTION: Arbitration Petition (Civil) No.17 of 2020.

Petition under section 11(6) read with section 11(12) of the Arbitration and Conciliation Act, 1996, for Appointment of Sole Arbitrator.

With

Arbitration Petition (Civil) No. 16 of 2020.

Dr. A. M. Singhvi, Sr. Adv., Amit Dhingra, Shivam Kumar Raheja, Amit Bhandari, Pranav Kamnani, M/s Dua Associates, Advs. for the Petitioner.

Nikhil Nayyar, Sr. Adv., Gyandendra Kumar, Ms. Shikha Tandon, Robin Grover, Ms. Shree Sinha, Sumit Attri, M/s Cyril Amarchand Mangaldas, Advs. for the Respondents.

The Judgment of the Court was delivered by

SURYA KANT, J.

1. The Petitioner DLF Home Developers Limited (hereinafter, "DHDL") has filed Arbitration Petition No. 16 of 2020 and Arbitration

Petition No. 17 of 2020 under Section 11(6) read with Section 11(12) of the Arbitration and Conciliation Act, 1996 (hereinafter, "Act") for appointment of sole arbitrator to adjudicate the differences between the parties that have arisen out of the two Construction Management Agreements dated 25.01.2017.

FACTS

2. DHDL is a limited liability involved in the business of providing development, management, and investment services concerning real estate projects. The Petitioner and one Ridgewood Holdings Limited entered into a joint venture, in the year 2007-2008, wherein Ridgewood Holdings Limited invested in four Special Purpose Vehicles, including Rajapura Homes Private Limited (Respondent No.1 in Arbitration Petition No.17 of 2020; hereinafter, "Respondent No.1") and Begur OMR Homes Private Limited (Respondent No.1 in Arbitration Petition No.16 of 2020; in short "Begur Company"), for developing residential projects in various cities across India. Respondent No.1 is a company engaged in the construction, development, operations, and maintenance of residential projects, namely, 'DLF Maiden Heights' and 'DLF Woodland Heights,' both of which are in Bangalore, Karnataka (collectively called "Rajapura Project"). Similarly, the Begur Company is engaged in the business of construction, development, operations, and maintenance of residential projects, namely, 'DLF Garden City' situated at Kanchipuram District, Tamil Nadu, and 'DLF Westend Heights' situated in Bengaluru District, Karnataka (collectively called "Southern Homes Project").

3. In June 2008, Ridgewood Holdings Limited transferred its stake in the joint venture to its affiliates, Resimmo PCC (in short, "Respondent No.2") in both the Petitions and Clogs Holding BV (hereinafter, "Clogs"). Thereafter, in terms of the arrangement, upon expiry of the exit period, Respondent No.2 and Clogs were *inter alia* entitled to a put option on the Petitioner, which they exercised from January to May 2014. However, the Petitioner was unable to provide an exit to Respondent No.2 and Clogs. Subsequently, in 2015, the parties agreed to a negotiated settlement, in terms of which, Respondent No.2 was to acquire sole ownership and control of two Special Purpose Vehicles, namely, Respondent No.1 and the Begur Company. It may be noted that Respondent No.2 is a company incorporated under the laws of Mauritius and is engaged in the business of providing investment management services.

A 4. To effect the change of ownership of the First Respondent, the Petitioner, Respondent No.1, and Respondent No.2 executed a Share Purchase Agreement dated 08.07.2016 (hereinafter, "Rajapura SPA") for the transfer of Petitioner's entire shareholding in Respondent No.1 to Respondent No.2. Likewise, a Share Purchase Agreement dated 25.01.2017 was also executed between the Petitioner, the Begur B Company and Respondent No.2 to transfer the Petitioner's entire holding in the Begur Company to Respondent No.2 (hereinafter, "Southern Homes SPA"). While the primary subject matter of the Share Purchase Agreements was the transfer of shares from the Petitioner – DHDL to Respondent No.2, both the Share Purchase Agreements also stipulated C certain additional obligations that would have to be undertaken by the Petitioner. Clause 3.1 read with Schedule-II of the agreements contemplated that the parties were to execute a construction management agreement as a 'condition precedent' to the closing of the transactions. Further, in terms of Clause 6 of the respective agreements, the Petitioner had to undertake certain construction related obligations, D which were to be performed "*in accordance with the terms of the Construction Agreement*". We may note that both the Share Purchase Agreements also contained an arbitration clause which are identical. Clause 9 of the agreements contemplate that all disputes arising out of the contract shall be submitted for arbitration at the request of the parties. E The arbitration is to be conducted in accordance with the rules of the Singapore International Arbitration Centre (hereinafter, "SIAC"), with the seat and venue of the arbitration being Singapore.

5. Thus, in terms of the agreement and in pursuance of the construction obligations under the Rajapura SPA and the Southern Homes F SPA, the Parties on 25.01.2017 executed the DLF-Rajapura Homes Construction Management Services Agreement (hereinafter, "RCMA") and the DLF-Southern Homes Construction Management Services Agreement (hereinafter, "SCMA"). Under the RCMA, the Petitioner was to provide, *inter alia*, construction management services to Respondent No.1 for completion of the Rajapura Homes Project and in G connection with the handover of sold units of the Rajapura Homes Project. Likewise, under the SCMA, the Petitioner had to provide similar services to the Begur Company for the completion of the Southern Homes Project and in connection with the handover of the sold units. It is pertinent to mention that both the aforementioned Agreements also contained H selfsame arbitration clauses. Clause 11 of the Agreements contemplate

that the seat and venue of Arbitration would be New Delhi, and the arbitration would be governed by the Arbitration and Conciliation Act, 1996.

6. As a consideration for the construction management services to be provided by it under the SCMA and the RCMA, the Petitioner - DHDL in terms of Clause 4 of the respective agreement, was entitled to a *"Fee"*. Clause 4.1 and 4.2 of the SCMA and RCMA, stipulated that upon concluding its construction obligations, DHDL would submit a written notice of completion to Respondent No.1 and the Begur Company. Thereafter, Respondent No. 1 or the Begur Company, as the case may be, shall have the right to reject or confirm the completion of the Rajapura Homes Project and the Southern Homes Project. The agreements further specify that once Respondent No.1 and the Begur Company accepted the notice of completion, Ressimo PCC would be obligated to invest a sum of Rs.75 crores (75,00,00,000/-) in the Begur Company. The said amount is to be dealt with in the manner prescribed under the SCMA and RCMA. It is not in dispute that petitioner-DHDL intended to be the indirect beneficiary of the said Rs.75 crores. To further clarify the modalities of the *"Fee"* payable to DHDL under the SCMA and RCMA, a Fee Computation Agreement dated 25.01.2017 was also executed between Respondent No.1, the Begur Company and Respondent No.2 (hereinafter, "Fee Agreement").

7. The Petitioner-DHDL issued a written notice dated 16.08.2019 certifying the completion of the Southern Homes Project pursuant to Clause 4.2 of the SCMA and called upon the Begur Company to fulfill its subsequent obligation. However, the Begur Company vide reply dated 30.08.2019, refused to accept it as a Valid Notice of completion under clause 4.2 of the SCMA. The Begur Company alleged that there had been a delay in completing the construction projects and that the Petitioner had not complied with the "Information Covenant" contemplated in Clause 3.1 of the SCMA. The Begur Company further stated that the notice was incomplete and lacked the necessary documents. Hence, while refusing to accept the notice, the Begur Company called upon the Petitioner to provide the required information and documents.

8. The Petitioner also issued written notice dated 26.10.2019, certifying the completion of the Rajapura Project pursuant to Clause 4.2 of the RCMA. Respondent No.1 vide its reply dated 27.01.2020 again refused to accept it as a valid notice of completion and cited reasons of

A delay and non-completion of the Rajapura Homes Project, incomplete notice, amongst others. The record reveals that after the rejection of the notices dated 16.08.2019 and 26.12.2019, there were several communications between the parties; however, they were unable to resolve their differences.

B 9. The Petitioner subsequently vide letter dated 26.05.2020 issued a notice invoking arbitration under Clause 11 of the SCMA and RCMA. The Petitioner's case was that the notice of completion dated 16.08.2019 and 26.12.2019, which were issued pursuant to Clause 4.2 of the SCMA/ RCMA, were unreasonably rejected by the Respondent(s). The Petitioner-DHDL alleged that the refusal of the Respondent Companies C to accept the notice of completion was a breach under the SCMA and RCMA and was aimed at avoiding Respondent No.2's obligation to invest Rs.75 crores in the Begur Company as contemplated under the SCMA, RCMA and the Fee Agreement. The Petitioner further referred all disputes arising out of the RCMA and SCMA to a common and composite D Arbitral Tribunal comprising a sole arbitrator. The Petitioner also proposed two names, for one of them to be appointed as the sole arbitrator.

10. The Respondents (i.e. Respondent No.1, the Begur Company and Respondent No.2) vide two separate emails, both dated 12.06.2020, however, refused to appoint a sole arbitrator. They stated that the dispute E between the parties was not whether Respondent No.2 had any obligation after accepting the respective notice of completions but whether or not completion in respect of the Rajapura Project and the Southern Homes Project has been achieved, which is an obligation on DHDL under Clause 6 of the Rajapura SPA and Southern Homes SPA. It was thus claimed that the differences between the parties have arisen under the Rajapura F SPA and Southern Homes SPA and not under the RCMA/SCMA. The Respondents further refused to have the disputes consolidated into a common and composite tribunal and instead asserted that the same would have to be resolved under separate arbitration proceedings. Thereafter, on 13.06.2020, the Respondents issued two more letters through their G Counsel, Fresh fields Bruckhaus Deringer Singapore Pte. Ltd., reiterating that the disputes between the parties do not fall within the terms of the SCMA and RCMA. Further, the Respondent(s) reserved their right to invoke the dispute resolution provisions under the Southern Homes SPA and Rajapura SPA, respectively by instituting arbitral proceedings under the rules of SIAC.

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11. Aggrieved by the refusal of the Respondent(s) to appoint an Arbitrator under the RCMA and SCMA, the Petitioner has preferred these two separate petitions under Section 11(6) read with Section 11(12) of the Act, praying for appointment of a sole arbitrator for resolution of all disputes arising from the SCMA and RCMA. It may be highlighted that since Respondent No.2 is not a body incorporated in India, the arbitration between the Parties falls within the ambit of 'international commercial arbitration' as defined under Section 2(1)(f) of the Act.

CONTENTIONS

12. We have heard learned Senior Counsels appearing for the parties at considerable length. Learned Senior Counsel appearing on behalf of the Petitioner–DHDL contended that the Begur Company and Respondent No.1 acted unreasonably in not accepting the notice of completion. The rejection of the notice certifying the completion of Rajapura Homes Project and Southern Homes Project was allegedly done with the sole purpose of avoiding Respondent No.2's obligation to pay "Fee" to the Petitioner. He further pressed that the contention of the Respondents that the disputes in question cannot be arbitrated under the RCMA and SCMA is legally and factually misconceived.

13. Drawing force from the decisions of this Court in the cases of ***(i) Duro Felgura, S.A. v. Gangavaram Port Limited***[1], ***(ii) Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited***[2], ***(iii) Mayavati Trading Private Limited v. Pradyuat Deb Burman***[3], and ***(iv) Vidya Drolia and Others v. Durga Trading Corporation***[4], learned Senior Counsel for the Petitioner submitted that this Court while dealing with an application under Section 11(6) of the Act has a narrow scope of examination, confined only to trace out whether there exists an 'arbitrable dispute' and a 'written contract' providing 'arbitration' as the Dispute Resolution Mechanism. He canvassed that since the parties have not disputed the existence of arbitration agreement or its core contractual ingredients contained in the SCMA and RCMA, the present dispute, in terms of the settled law, should be referred to arbitration. The recent decision of this Court in

[1] (2017) 9 SCC 729, ¶ 48 & 59
[2] (2019) 9 SCC 209, ¶14
[3] (2019) 8 SCC 714, ¶10
[4] (2021) 2 SCC 1, ¶236, 237, 244.3, 244.4, 244.5, 244.5.1–244.5.3

A ***Uttarakhand Purv Sainik Kalyan Nigam Limited v. Northern Coal Field Limited***[5], has also been relied upon to contend that once the existence of the arbitration agreement was established, all other incidental issues should be left to be decided by the arbitrator as prescribed under Section 16 of the Act, which enshrines the principle of "Kompetenz Kompetenz". The contention appears to be that the Arbitral Tribunal would eventually rule whether or not the disputes between the instant parties fall under the terms of the SCMA and the RCMA.

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14. Learned Senior Counsel for the Petitioner further contended that although the RCMA and SCMA are two separate agreements, they are inextricably interlinked, and since the dispute in question relates to payment of 'Fees' to the Petitioner for its services under both the Construction Management Agreements, the disputes may be referred to a common and consolidated arbitral tribunal. Reliance has been placed on the judgment of this Court in ***P.R. Shah, Shares and Stock Brokers Private Limited v. BHH Securities Private Limited and Others***[6], to urge that proceedings ought to be consolidated to avoid multiplicity of arbitrations and conflicting decisions, which would have the potential to cause injustice. In the alternative, it was prayed that this Court may appoint the same sole arbitrator in both the Arbitration Petitioner No.17 of 2020 and Arbitration Petition No.16 of 2020, and leave the decision relating to consolidation of the arbitral proceedings to the discretion of the sole arbitrator.

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15. Per Contra, learned Senior Counsel appearing on behalf of the Respondents vehemently controverted the case of DHDL and reiterated that the dispute sought to be raised in the present Arbitration Petitions exclusively falls within the ambit of Rajapura SPA and Southern Homes SPA; therefore, the differences between the parties could not be referred to arbitration under the RCMA and SCMA. He argued that the Rajapura SPA and the Southern Homes SPA are the principal agreements governing the transaction between the parties, and the RCMA/SCMA were subsequently executed only to operationalise the manner in which the Petitioner would fulfill its construction obligation as per Clause 6 of the respective Share Purchase Agreements. It was further alleged that while DHDL is intended to be the beneficiary of Rs.75 crores to be deposited by Respondent No.2, the economic interest

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[5] (2020) 2 SCC 455, ¶7.10, 7.11

H [6] (2012) 1 SCC 594, ¶ 19

of the Respondent(s) is confined to the undeveloped land, and the breaches on the part of the Petitioner concerning its obligations under Clause 6 of the Share Purchase Agreements have made it difficult for them to monetise the undeveloped land. It was therefore contended that the instant disputes could only be arbitrated as per the dispute resolution mechanism specified in Clause 9 of the Rajapura SPA/Southern Homes SPA, namely, the Rules of SIAC with seat and venue of Arbitration at Singapore. He urged that if the seat of Arbitration were to be found outside India, i.e, Singapore, the instant Applications under Section 11(6) of 1996 Act are not maintainable[7].

16. Citing the decisions of this Court in ***Duro Felgura, S.A. (supra)***[8] and ***Vidya Droila (supra)***[9], Senior Counsel for the Respondentscontended that while deciding an application under Section 11(6), this Court cannot act cursorily and an absolute 'hands off' approach would be counterproductive. He drew support from the afore-cited decisions to emphasise that this Court is required to examine whether the agreement(s) in question contain a clause that provides for arbitration in respect of the disputes which have actually arisen between the parties. He drew our attention to the judgement in ***Olympus Superstructure Pvt. Ltd. v. Meena Vijay Khetan and Others***[10], wherein, this Court held that in a situation where there are disputes and differences in connection with the main agreement and also disputes regarding other matters connected thereto, the arbitration would be governed by the general arbitration clause of the main agreement. Lastly, it was submitted that in the event the present arbitration petitions are allowed, this Court while following the principles laid down in ***Duro Felguero, S.A., (Supra)*** and ***Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund and Ors***[11], need to appoint separate arbitral tribunals under the RCMA and SCMA, though it may comprise of the same sole arbitrator.

ANALYSIS

17. There is no gainsaying that by virtue of the Arbitration and Conciliation (Amendment) Act, 2015, by which Section 11 (6-A) was

[7] Bharat Aluminum Company v. Kaiser Aluminum Technical Services Inc., (2012) 9 SCC 552, ¶117; Mankatsu Impex Private Limited v. Airvisual Limited (2020) 5 SCC 399,¶ 14, 16, 18-28
[8] ¶48
[9] ¶132, 134, 139, 147.2, 147.6, 147.7 & 147.10
[10] (1999) 5 SCC 651, ¶ 27, 28 & 30
[11] 2021 SCC Online SC 268, ¶ 39

A introduced, the earlier position of law as to the scope of interference by this Court at the stage of referral has been substantially restricted. It is also no more *res integra* that despite the subsequent omission of Section 11(6-A) by the Arbitration and Conciliation (Amendment) Act, 2019, the legislative intent behind thereto continues to be a guiding force for the Courts while examining an application under Section 11 of the Act.

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18. The jurisdiction of this Court under Section 11 is primarily to find out whether there exists a written agreement between the parties for resolution of disputes through arbitration and whether the aggrieved party has made out a *prima facie* arbitrable case. The limited jurisdiction, however, does not denude this Court of its judicial function to look beyond the bare existence of an arbitration clause to cut the deadwood. A three-judge bench in ***Vidya Drolia (Supra)***, has eloquently clarified that this Court, with a view to prevent wastage of public and private resources, may conduct 'prima facie review' at the stage of reference to weed out any frivolous or vexatious claims. In this context, the Court, speaking through Sanjiv Khanna, J. held that:

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> "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.
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> 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.
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> 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

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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."

N.V. Ramana, J. (as His Lordship then was) in his supplementary opinion further crystalised the position as follows:

"244. Before we part, the conclusions reached, with respect to Question 1, are:

244.1. Sections 8 and 11 of the Act have the same ambit with respect to judicial interference.

244.2. Usually, subject-matter arbitrability cannot be decided at the stage of Section 8 or 11 of the Act, unless it is a clear case of deadwood.

244.3. The court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie (summary findings) case of non-existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding.

244.4. The court should refer a matter if the validity of the arbitration agreement cannot be determined on a prima facie basis, as laid down above i.e. "when in doubt, do refer".

244.5. The scope of the court to examine the prima facie validity of an arbitration agreement includes only:

244.5.1. Whether the arbitration agreement was in writing? Or

244.5.3. Whether the core contractual ingredients qua the arbitration agreement were fulfilled?

244.5.4. On rare occasions, whether the subject-matter of dispute is arbitrable?"

[Emphasis Applied]

A 19. To say it differently, this Court or a High Court, as the case may be, are not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section B 11(6-A) of the Act. Such a review, as already clarified by this Court, is not intended to usurp the jurisdiction of the Arbitral Tribunal but is aimed at streamlining the process of arbitration. Therefore, even when an arbitration agreement exists, it would not prevent the Court to decline a prayer for reference if the dispute in question does not correlate to the said agreement.

C 20. Keeping the settled position of law in mind, the foremost question that arises for our consideration is whether the nature of dispute sought to be referred for arbitration in these petitions fall under the Arbitration Clause(s) of RCMA and SCMA, governed by the Arbitration and Conciliation Act, 1996, with the seat and venue for arbitration at D New Delhi or such disputes can be arbitrated only in terms of the dispute resolution mechanism specified in Clause 9 of the Rajapura SPA/Southern Homes SPA i.e. under the rules of the Singapore International Arbitration Centre and the seat and venue of the arbitration at Singapore?

E 21. With a view to analyse and answer the afore-stated question, it is essential to understand the nature of the two sets of agreements executed between the parties from time to time and the subsequent amendments thereof.

22. The first set of agreements comprises of two Share Purchase F Agreements. Rajapura SPA was executed on 08.07.2016, whereunder the Petitioner, Respondent No.1 and Respondent No.2 agreed to the sale of shares of Respondent No.1 by DHDL in favour of Respondent No.2/Resimmo PCC as 'the purchaser'. The Southern Homes SPA dated 25.01.2017 also pertains to the sale of shares of the Begur Company by DHDL to Respondent No.2. Although these are two agreements but the G agreed terms are materially same except the total equity shares agreed to be sold and the location of the residential projects. We thus, for the sake of brevity, propose to re-produce the following relevant clauses from the Rajapura SPA:-

H

"1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions**

...

"Rajapura Projects Completion" shall have the meaning ascribed in Clause 6.3;

…

2. AGREEMENT TO SELL AND PURCHASE THE SALE SHARES

2.1 Subject to the terms and conditions of this Agreement, the Seller agrees to sell the Purchaser, and the Purchaser agrees to purchase from the Seller, on the Closing Date, the Sale Shares free and clear from all Encumbrances, together with all rights, title and interests arising therefrom (including all rights and advantages now and hereafter attaching or accruing thereto), such that the Purchaser shall, upon completion of the sale of the Sale Shares in its name, receive full legal and beneficial ownership of the said Sale Shares and all rights and benefits relating thereto and arising thereof.

2.2 The Sale Shares shall be purchased by the Purchaser in their entirety on the Closing Date. The Seller shall have the right to refuse to sell the Sale Shares to the Purchasers if the Purchasers is unwilling to purchase or does not purchase in entirety the Sale Shares on the Closing Date.

…

3. CONDITIONS PRECEDENTS

3.1 The Seller shall do all acts, deeds and things (including by exercising their voting rights at Board and shareholder meetings) and shall execute all documents necessary, incidental or ancillary to the fulfillment of the conditions set out in SCHEDULE II (the "Conditions Precedent"). If any Party becomes aware of any event or circumstance that will or may prevent any of the Conditions Precedent from being satisfied, on or prior to the Closing Date, it shall forthwith notify

A the other Parties in writing of such event or circumstance and the Parties shall take such action and steps as may be required (to the extent within a Party's control) to remove the event/ circumstances without imposing any liability on any other Party and without the prior written consent of such other Party.

B …

3.3 The obligation of the Purchaser to purchase Sale Shares and pay the Sale Consideration on the Closing Date in the manner specified in this Agreement, shall be conditional upon fulfilment by the Seller (or where permissible under applicable Law, waiver C in writing by the Purchaser in its sole discretion) of the Conditions Precedent.

…

6. CONSTRUCTION RELATED OBLIGATIONS OF THE SELLER

D

6.1 The Seller shall, through appropriate contractors to be appointed by the Company (in accordance with the terms of the Construction Agreement), as per the terms set out in SCHEDULE V and to be set out in the Construction Agreement proposed to be executed as a Condition Precedent, E ensure (i) completion of construction of the Rajapura Phase II Project on or prior to December 31, 2016, (ii) obtain the occupation certificate for the Project on or prior to December 31, 2016; and (iii) where applicable, hand over possession of units of the Rajapura Projects to the purchasers of units or the Company (as and when F required pursuant to the applicable sales contracts and/or Law but subject to the aforementioned time limit) until the later of (i) 12 (twelve months) from receipt of the occupation certificate for the Rajapura Phase II Project, the timeline for completion of the Rajapura Phase II Project shall, subject to the Seller taking reasonable steps to minimize the impact of the Force Majeure G event, be extended from December 31, 2016 by such period as for which such Force Majeure event subsists. The obligation of the Seller with respect to handover after expire of the aforementioned time period shall be as set out in the Construction Agreement. Provided however that any unit for which final H demand has been raised by the Company but for which possession

has not been taken over by the customer despite 2 (two) written reminders and passage of 4 (four) months from the raising of the final demand shall be deemed to have been handed over for the purpose of completion of the Construction Covenant. Further, Seller shall write to the Anekal Planning Authority in relation to the completion certificate for Rajapura Phase II Project, requesting that the completion certificate dated December 12, 2016 reference number APA/LAO/59/2011-12 be deemed final as Company has decided to abandon the construction of towers W and X in Building No. 6 of the Rajapura Phase II Project, get an acknowledgment of receipt of the application from Anekal Planning Authority, and make reasonable efforts to obtain an endorsement on the application from Anekal Planning Authority.

6.2 In addition, the Seller shall, through appropriate contractors to be appointed by the Company (in accordance with the terms of the Construction Agreement), on or prior to March 31, 2018, as per the terms to be set out in the Construction Agreement proposed to be executed as a Condition Precedent, ensure completion of construction of the club house of 2,469.33 (two thousand four hundred sixty nine point three three) square metres built up area and 2,469.33 (two thousand four hundred sixty nine point three three) square metres built up area and 2,446.25 (two thousand four hundred forty six point two five) square metres FAR area in the Rajapura Projects as per the terms set out in SCHEDULE V ("Club Construction"); provided that in the event that a Force Majeure event materially impacts the Club Construction, the timeline for completion of the Club Construction shall, subject to the Seller taking reasonable steps to mitigate the impact of the Force Majeure event, be extended from March 31, 2018 by such period as for which such Force Majeure event subsists.

...

9. DISPUTE RESOLUTION

All disputes or differences regarding this Agreement shall be submitted to final and binding arbitration at the request of any of the disputing Parties upon written notice to that effect to the other Parties. In the event of such arbitration:

A **(i) The arbitration shall be in accordance with the rules of the Singapore International Arbitration Centre ("SIAC"), in force at the relevant time (which is deemed to be incorporated into this Agreement by reference);**

B **(ii) All proceedings of such arbitration shall be in the English language. The venue of the arbitration shall be Singapore, which shall be the seat of the arbitration;**

…

C [Emphasis Applied]

23. It may be mentioned that the Rajapura SPA was mutually amended by agreements dated 25.01.2017 and 16.03.2017. Similarly, the Southern Homes SPA was also amended by an agreement dated 16.03.2017. The relevant clauses extracted above have taken notice of
D the amendments conjointly carried out by the parties.

24. In terms of Clauses 3.1, 6.1 and 6.2 of Share Purchase Agreements, as re-produced above, the parties entered into two Construction Management Service Agreements dated 25.01.2017 in respect of Rajapura Project (RCMA) and Southern Homes Project
E (SCMA). Since both these agreements are also in boilerplate language, the following relevant clauses of the RCMA are extracted:

"2. ENGAGEMENT & SCOPE OF SERVICES

2.1 On the terms and subject to the conditions set out in this
F Agreement DHDL undertakes to provide construction management services to the Company in relation to the completion (pursuant to the receipt of appropriate occupation certificates) of the Rajapura Projects and services in connection with the handover of sold units in the Rajapura Projects and Construction Covenant (collectively, the "Services"). The scope of the Services shall
G include:

(i) Monitoring and supervising the work being undertaken by the project management consultant appointed for the Rajapura Projects in accordance with the terms of the PMC Contract:

H

(ii) Monitoring and supervising of works being undertaken by the various contractors appointed in accordance with the terms of the Existing Construction Contracts and Sub-Contracts:

(iii) Evaluation of prospective contractors for award of construction works for the Rajapura Projects Completion:

(iv) Finalization and execution, on behalf of the Company, of construction contracts with identified contractors for Rajapura Projects Completion; ("New Construction Contracts"), in accordance with the Approved Budget, provided that the cost pursuant to this Clause 2.1 (iv) may exceed up to a cap of 25% (twenty five per cent) over the cost estimates in the Approved Budget:

(v) Monitoring and supervising of works being undertaken by the various contractors appointed in accordance with the terms of the New Construction Contracts:

…

4. FEES AND EXPENSES

4.1 In consideration of the Services to be provided by DHDL and performance of the terms of this Agreement, DHDL shall be entitled subject to the terms and conditions contained in this Agreement, to the Fees and the Company shall pay to DHDL the Fees (in the manner set out in this Clause 4), after deduction of any withholding tax required to be withheld deducted in accordance with Applicable Law.

4.2 Forthwith upon completion of the Construction Covenant and receipt of the occupation certificate in respect of each of the projects comprised in the Rajapura Projects, DHDL shall send a written notice to the Company certifying fulfilment of completion of the Rajapura Projects, and enclose certified true copies of all necessary documents evidencing fulfilment of the same and the Company shall have the right to reject or confirm the fulfilment, within a period of 15 (fifteen) days from the date of receipt of the aforementioned written notice from DHDL, provided that the Company shall act reasonably in exercising such right, and receipt of occupation certificate from an appropriate

Governmental Authority will signify completion of any building. In case the Company fails to respond to the said certificate within a period of 15 (fifteen) days, then the Company shall be deemed to have accepted the fulfilment of completion of the relevant project comprised in the Rajapura Projects.

4.3 Immediately upon receipt of the Rs.750,000,000 (Rupees Seven Hundred and Fifty Million) by Southern Homes in the manner contemplated under Clauses 4.3 or

4.4 (as the case may be) of the Southern Homes Construction Agreement, the Company shall deposit an amount of Rs.150,000,000 (Rupees One Hundred and Fifty Million) into a separate bank account of the Company identified by Resimmo and, notwithstanding anything to the contrary contained in the Agreement, the Company shall be entitled to deal with this amount of Rs.150,000,000 (Rupees One Hundred and Fifty Million) in such manner as determined by its Board and the balance shall be dealt with as per the hierarchy of payment set out in Clause 3.8 above.

11. DISPUTE RESOLUTION

Subject to Clause 4.6, all disputes or differences regarding this Agreement shall be submitted to final and binding arbitration at the request of any of the Parties upon written notice to that effect to the other Party. In the event of such arbitration:

(i) The arbitration shall be in accordance with the Arbitration and Conciliation Act**, 1996, in force at the relevant time (which is deemed to be incorporated into this Agreement by reference);**

(ii) All proceedings of such arbitration shall be in the English language. The venue of the arbitration shall be New Delhi, which shall be the seat of the arbitration and the courts of New Delhi shall have exclusive jurisdiction over the arbitration proceedings;

(iii) The arbitration shall be conducted before a sole arbitrator appointed jointly collectively by the Parties. In the event that the Parties are unable to agree on a

sole arbitrator within 15 (fifteen) Business Days following submission of the dispute to arbitration, the arbitrator shall be appointed in the manner prescribed under the Arbitration and Conciliation Act, 1996."

…

[Emphasis Applied]

25. The 'Share Purchase Agreements' as well as the 'Construction Management Agreements' are subsisting and have not been repudiated by the Parties. Both sets of agreements contain arbitration clauses that are not similar to one another. We are, therefore, of the considered opinion that in order to determine the nature of arbitral proceedings, the two groups of agreements will have to be read in harmony and reconciled so as to avoid any head on collision, and thereafter a conclusion as to which of the clauses would be applicable in the present case, needs to be drawn.

26. Upon perusing the Share Purchase Agreements, it is clear that the primary purpose of these agreements is to effectuate the change of ownership of Respondent No.1 and the Begur Company from DHDL to Resimmo PCC. No doubt, the Rajapura SPA and the Southern Homes SPA as per their Clause 6.1 and 6.2, do provide for the completion of the respective residential projects as a post-closing obligation, however, these construction obligations had to be fulfilled in accordance with the terms of the 'Construction Agreements'. The very purpose of the RCMA and SCMA was, on the other hand, to operationalise the manner in which the Petitioner-DHDL would achieve the said construction related obligations. The construction agreements not only contemplate the scope of services to be provided by the petitioner but also lays down the obligation on Respondent No.2 to pay "Fee" to the Petitioner-DHDL upon completion of the residential projects. A *prima facie* reading of 'Share Purchase Agreements' and 'Construction Management Agreements', does suggest that notwithstanding certain overlaps between these agreements, their object and field of operation is different and distinct in nature. It is therefore difficult for us to accept it outrightly that the respective Share Purchase Agreements are the 'principal agreements governing the transaction' between the parties or that the present disputes can be resolved solely under the arbitration clause contained therein.

27. The dispute sought to be referred to arbitration by the Petitioner DHDL pertains to non-deposit of agreed amount by Respondent No.2

and resultant payment thereof as 'Fee' which the Petitioner claims in terms of clause 4 of RCMA/SCMA. Whether or not the Petitioner has complied with the 'condition precedent' under Rajapura SPA and thus has become entitled to 'fee' as per clause referred to above, is purely a question of fact to be determined by the Arbitral Tribunal.

28. We may at this stage also briefly refer to the judgment of this Court in ***Olympus Superstructure (Supra),*** wherein this Court faced two different arbitration clauses in two related agreements between the same parties. The main agreement therein was concerned with the selling of certain flats, and the related agreement was an Interior Design Agreement, both of which contained an arbitration clause that was not similar to each other. Since two valid arbitration clauses existed and the parties were relying upon the different arbitration clauses, this Court harmonised both the clauses and viewed that the arbitration clause in the main agreement was worded in wide terms and specifically contemplated issues that were in "***any way connected with, arising out of or in relation to the subject matter of the arbitration agreement***". This Court, therefore, aptly held that since the disputes arising from the Interior Design Agreement were intrinsically "*connected with*" the disputes and differences arising out of the main contract, such dispute could also be adjudicated under the main agreement itself.

29. The nature of arbitration clauses in the present case are substantially different when compared with the dispute resolution clause of the main agreement in ***Olympus Superstructure (Supra)***. The arbitration Clause 9 of the Rajapura SPA/Southern Homes SPA does not have any overriding effect and is in no way broader or wider when compared to Clause 11 of the RCMA/SCMA. Therefore, even if we were to assume that the present differences between the parties are incidental to the terms of the Share Purchase Agreements, it is difficult to construe that Clause 9 of Share Purchase Agreements contemplates adjudication of the issues that are "connected with" or are "in relation" to the subject matter of the Share Purchase Agreements.

30. Further, if the Respondent(s) plea, that present dispute(s) should be arbitrated only under the Rajapura SPA/Southern Homes SPA is accepted at face value, the eventual result would be that any and all disputes relating to the Petitioner's construction obligation would be arbitrable under the provisions of the Share Purchase Agreements only.

But then, what would be the purpose of having a separate arbitration clause 11 under the RCMA/SCMA? The parties do not seem to have rendered the arbitration clause in RCMA and SCMA as redundant, more so when these are the agreements later in time. It, thus, appears to us that the scope of the arbitration clause in Rajapura SPA/Southern Homes SPA is limited to issues relating to the agreement's primary subject matter, i.e., any dispute arising out of the transaction of sale and purchase of shares. The provisions of the RCMA/SCMA, and the arbitration clause therein, would as a logical corollary then be applicable to any dispute/ difference concerning the performance of the construction related obligations and deposit of agreed amount by Respondent No.2 or payment thereof to the Petitioner-DHDL.

31. The Petitioner has not once alleged in these Petitions that the dispute sought to be referred to Arbitration emanates from the Share Purchase Agreements. As far as the share transactions between the Petitioner and Respondent No.2 is concerned, learned Senior Counsel for the Petitioner has unequivocally submitted that the purchase of shares by Respondent No.2 has been duly completed. There is nothing on record to suggest that Respondent No.2 is aggrieved by non-compliance, deviation or breach of promise to sell its shares by the Petitioner-DHDL. On the contrary, the counter-affidavit filed by the Respondent(s) indicates that the sale of the shares of Respondent No.1 and the Begur Company have been completed. Still further, it is not the case that Ressimo PCC has already invoked Clause 9 of the Rajapura SPA or of the Southern Homes SPA. Thus, when neither party has pleaded the infringement of the core provisions of the Share Purchase Agreements, it is difficult to accept outrightly that the subject-controversy falls within the ambit of Clause 9 of the said agreements and can be adjudicated only under the rules of SIAC, with seat and venue at Singapore.

32. At the cost of repetition, we may re-iterate that the Parties have neither denied that there is no 'arbitrable dispute' between them nor have they challenged the existence of the arbitration clause(s) in the Construction Management Service Agreements. Considering that the primary twin-test envisioned under Section 11(6) of the Act has been satisfied by the Petitioner-DHDL, we are of the view that the instant application(s) are maintainable. The nature of disputes that have arisen between the parties, thus, can be adjudicated in the arbitral proceedings under Clause 11 of the RCMA and SCMA.

33. It goes without saying, that if on appreciation of the facts and law, the arbitrator finds that the 'real dispute' between the parties stems from the Share Purchase Agreements dated 08.07.2016 and 25.01.2017, the arbitrator shall be free to wind up the proceedings with liberty to the Parties to seek redressal under the rules of SIAC.

34. We may now briefly deal with the question whether the disputes should be referred to a consolidated and composite tribunal or should there be two different arbitral tribunals to resolve the same. It was urged on behalf of the Petitioner that since the RCMA and SCMA are inextricably interlinked to each other, the dispute/difference cannot be segregated into two separate proceedings. It was pointed out that the obligation of computation/determination and payment of "Fee" to the Petitioner arises out of the SCMA, the RCMA and the Fee Agreement, and under the Fee Agreement, the parties have to calculate the "DLF Receivables". Such DLF Receivables have to be computed taking into account financial components/accounts of both, the Southern Homes Project and the Rajapura Homes Projects. It was thus submitted that in order to avoid multiplicity of proceedings which may result in conflicting awards, the sum of disputes may be referred to a single and composite arbitral tribunal.

35. The fact remains that the RCMA and SCMA, though interlinked and connected, are still two separate agreements. We also cannot lose sight of the fact that the case of the Respondent(s) is that the Petitioner has committed breaches under both RCMA as well as SCMA, and that the genesis of the disputes lies in separate and distinct facts. Save where the parties have resolved to the contrary, it would be inappropriate to consolidate the proceedings originating out of two separate agreements. However, since the Fee Agreement provides that the "Fee" can only be calculated after taking into consideration various financial components of both the Rajapura Homes Projects and the Southern Homes Project, it would be necessary for the sake of avoiding wastage of time and resources, and to avoid any conflicting awards, that the disputes under Arbitration Petition No.17 and Arbitration Petition No.16 are referred to a sole Arbitrator. We leave it to the wisdom of the sole arbitrator to decide whether the disputes should be consolidated and adjudicated under one composite award or otherwise. The modalities and manner in which the two separate arbitral proceedings shall be conducted shall also be resolved by the sole arbitrator.

CONCLUSION

36. In light of above discussion, Arbitration Petition No. 16 of 2020 and Arbitration Petition No.17 of 2020 are allowed. This Court appoints Mr. Justice (Retd.) R.V. Raveendran, Former Judge, Supreme Court of India as the sole arbitrator to resolve all disputes/differences between the parties. The arbitrator will be paid fees in accordance with the Fourth Schedule of the Arbitration and Conciliation Act, 1996 as amended from time to time.

37. A copy of this order be dispatched to Mr. Justice (Retd.) R.V. Raveendran, Former Judge, Supreme Court of India at the following address:

"Mr. Justice (Retd.) R. V. Raveendran
Former Judge, Supreme Court of India
No. 8/2, Krishna Road, Basavangudi
Bangalore - 560004.
Telephone Number: 080-26601279
Mobile Number: 09654500060"

Divya Pandey Petitions allowed.