

**BEFORE THE ARBITRAL TRIBUNAL COMPRISING OF
HON'BLE JUSTICE (Retd.) Sri. G. YETHIRAJULU (SOLE ARBITRATOR)
FORMER JUDGE, ERSTWHILE HIGH COURT OF STATE OF ANDHRA
PRADESH**

I.A. No. OF 2024

IN

Arb. No. 10 OF 2024

**(Arising out of Arb. Appl No 224 of 2022
Before the Hon'ble High Court for the State of Telangana at Hyderabad)**

In the matter between:

Y. Ravinder Reddy and others

...Petitioners/Respondents

And

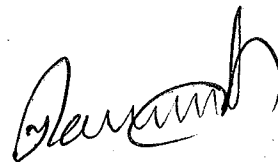
M/s. Modi Realty (Siddipet) LLP

...Respondent/Claimant

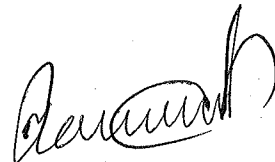
AFFIDAVIT

I, Y. Ravinder Reddy, S/o. Late Y.Bapu Reddy, Aged about 56 years, Occ:
Business, R/o. H. No. 2-20, Mallareddy Nagar, Prasanth Nagar, Siddhipet - 502103
do hereby solemnly affirm and state on oath as follows:

1. I am the Deponent herein and Respondent no.1 in the main case as such I am competent to depose to the instant affidavit on my behalf as well as on behalf of the others Petitioners/Respondents (*hereinafter referred to as "Petitioners herein"*) who are none other than my brothers and sisters.



2. Without prejudice to the rights of the Petitioners herein and without getting into the merits and demerits of the main matter, the Petitioners herein are filing the present application under Section 16 of the Arbitration and Conciliation Act, 1996, on two grounds –
- a) On the ground that the Letter of Intent dated 22.07.2016 read along with the Memorandum of Understanding dated 06.10.2016 relied upon by the Respondent/Claimant to invoke the present arbitration proceedings to resolve the dispute amongst the parties is not sufficiently stamped.
 - b) That the appointment of Arbitrator under section 11 (6) of the Arbitration and Conciliation Act, is barred by law of limitation since the section 11 application is not filed from the breaking point cause of action i.e., within 3 (three) years from the date of the termination of MOU dated 06.10.2016, by the Claimant letter dated 23.05.2019. Even otherwise also, appointment/constitution of this Hon'ble tribunal is barred by law since the arbitration invocation notice was issued by the Respondent/Claimant on 19.07.2019 and section 11 application before the Hon'ble High court for appointment of Arbitrator was filed on 22.09.2022 i.e., beyond 3 years from the date of invocation.
3. It is submitted that the Petitioners herein had raised the objection before the Hon'ble High Court for the state of Telangana in Arb. Appl. No 224 of 2022 filed under Section 11 of the Act, however, the Hon'ble High Court allowed the Section 11 application by giving liberty to the Petitioners herein to raise the disputes with respect to the insufficient stamp duty before the Hon'ble Tribunal. Even otherwise



also as per Section 16 of the Arbitration and Conciliation act 1996, a party shall not be precluded from raising such a plea merely because he has appointed or participated in appointment of an Arbitrator. As such, the present application is being filed before the Hon'ble Tribunal. A copy of the letter of intent along with the Memorandum of Understanding dated 06.10.2016 is filed herein as **Annexure No RD - 1**. The copy of the order passed in Arb. Appl No 224 of 2022 is filed herein as **Annexure No RD - 2**. The copy of the Petition and the counter filed in Arb. Appl. 224 of 2022 is filed herein as **Annexure No RD-3 (Colly)**.

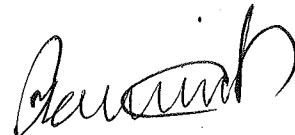
Facts leading to the filing of the present application

4. It is submitted that the Petitioners herein are the owners of land admeasuring Ac.4- 19Gts in Sy.No.2013, 2014 and 2016, situated at Siddipet Village, Siddipet Mandal, Medak District, Telangana ("Schedule Property"). It is submitted that the Respondent/Claimant having come to know that the Petitioners herein are the absolute owners and possessors of the Schedule Property had approached the Petitioners herein, and expressed their intention to develop the Schedule Property.
5. After due deliberations between the parties and after carrying out due diligence in respect of the Schedule Property, the Respondent/Claimant had come up with a proposal for developing the Schedule Property, pursuant to which both the parties agreed to enter into a Development Agreement. It is further submitted that it was agreed between both the parties that the Respondent/Claimant being the developer shall be entitled to a share for 65% of the developed area, and the Petitioners herein being the land owners shall be entitled for 35% share of the developed area apart from the Respondent/Claimant paying security deposits to the Petitioners



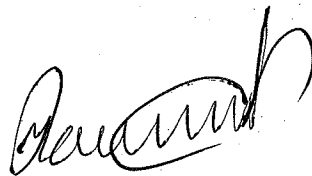
herein as stipulated under the Development Agreement. It is further submitted that the Respondent/Claimant who was into the business of real estate and development assured the Petitioners herein and took the responsibility of drafted a Development Agreement in the interest of both the parties as per the understanding that was arrived between the parties during the time of deliberations and believing the version of the Respondent/Claimant, the Petitioners herein agreed for the same. However, the Respondent/Claimant had got drafted an Agreement titled "Memorandum of Understanding " dated 06.10.2016 which was portrayed in a way as if the Respondent/Claimant was placed at a higher footing than the Petitioners/Respondents herein whereas the Petitioner herein had no bargaining power at all.

6. It is submitted that after getting the said document verified the Petitioners herein had confronted the Respondent/Claimant as to why it got drafted an agreement termed as Memorandum of Understanding instead of getting drafted a Development Agreement as assured. In response, the Respondent/Claimant had informed the Petitioners herein that in the event that Development Agreement is entered into between the parties then the parties have to pay huge amounts as stamp duty and that in the interest of both the parties, it is better to enter into the said Memorandum of Understanding as no stamp duty is required for execution of the such Memorandum of Understanding. It is further submitted that the Respondent/Claimant had also impressed upon the Petitioners herein by stating that though the Agreement's nomenclature is titled as "Memorandum of Understanding" still the same contains all the terms and conditions of a "Development Agreement" and that the shall be treated as Development

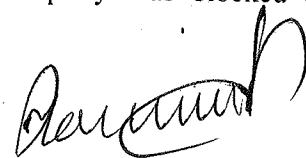
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Agreement and requested the Petitioners herein to enter into such Memorandum of Understanding. Believing the version of the Respondent/Claimant to be true, as the Respondent/Claimant had stated that this is the general modus operandi followed by the Respondent/Claimant in all its projects, the Respondents were left with no other choice but to sign the Memorandum of Understanding (MOU) dated 06.10.2016.

7. It is submitted that as per the MOU/ Development Agreement the Respondent/Claimant was entitled to a share for 65% of the developed area and the Petitioners herein were entitled for 35% share of the developed area apart from receiving the security deposit. It is submitted that pursuant to the execution of the MOU/ Development Agreement complied with all the formalities in order to hand over the original documents to the Respondent/Claimant and also the same was acknowledged and well within the knowledge of the Respondent/Claimant. However, instead of commencing the Development Project works, the Respondent/Claimant with a malafide intention started making allegations against the Petitioner herein by stating that there are third - party claims over the schedule property and that the Petitioners herein had informed the Respondent/Claimant about the same.
8. It is submitted that, even after 2 ½ years of entering into the MOU/ Development Agreement, the Respondent/Claimant did not commence the project works and instead came up with flimsy grounds against the Petitioners herein on one pretext or the other thus making it abundantly clear that the Respondent/Claimant has no interest in developing the schedule property.

A handwritten signature in black ink, appearing to be 'Raman', is located at the bottom right of the page.

9. It is submitted that, to the utter shock and surprise of the Petitioners herein, the Petitioners herein have received a notice dated 23.05.2019 wherein and where under the Respondent/Claimant had come up with all false and frivolous allegations and attributed motives to the Petitioners herein by stating that the Petitioners herein have not honoured obligations as per the MOU dated 06.10.2016. Surprisingly the Respondent/Claimant in an arbitrary and unilateral manner terminated the MOU/ Development Agreement dated 06.10.2016 vide a termination letter 23.05.2019 and also called upon the Petitioners herein to refund the security deposit of Rs.50,00,000/- along with interest @ 18% per annum.
10. It is submitted that, in response to the notice issued dated 23.05.2019 issue by the Respondent/Claimant, the Petitioners herein had got issued reply notice in their individual capacity dated 17.6.2019 and 08.7.2019 wherein and where under the Petitioners herein had categorically denied all those frivolous and baseless allegations made out by the Petitioner in the notice dated 23.05.2019. It is further submitted that the Petitioners herein have by way of their reply notice dated 17.06.2019 categorically informed the Respondent/Claimant that they have complied with the obligations under the MOU/ Development Agreement dated 06.10.2016 and that it was in fact the Respondent/Claimant who had failed to honour its part of the obligations under the Agreement dated 06.10.2016.
11. It is submitted that the Respondent/Claimant's unlawful actions and the delay in not commencing the project even after 8 years had caused great loss and hardships to the Petitioners herein as the Schedule Property was stuck up in the subject project due to which, on one side the Schedule Property was blocked and

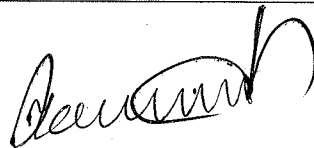


remained idle and on the other side when various people approached the Petitioners herein for purchasing the schedule property, the Petitioners herein due to the wrongful actions of the Respondent/Claimant were constrained not to accept such lucrative offers.

12. It is evident from the recital and clause of the Memorandum of Understanding 06.10.2016 that the nature of the work is in the form of Construction works, in essence even though the nomenclature of the agreement is "Memorandum of Understanding", however, the said agreement is in the nature of the construction agreement.

13. It is submitted that as per the provisions of the Indian Stamp Act more specifically, Article 6B of schedule I-A of the Stamp Act, the Memorandum of Understanding dated 06.10.2016 is in nature of construction agreement are amenable to the stamp duty and it further states that the stamp duty which is levyable on the Construction Agreement is 0.5% of the total value of the project. For the sake of ready reference article 6 B is extracted herein;

Article-No	DESCRIPTION OF INSTRUMENT	PROPER STAMP DUTY
6B	If relating to the construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of multi-stored building or for development/sale of any other immovable property.	Five rupees for every one hundred rupees or part thereof on the market value or the estimated cost of the proposed construction/development of such property as the case may be, as mentioned in the agreement or the value arrived at in accordance with the schedule of rates prescribed by the Public Works Department Authorities whichever is higher.



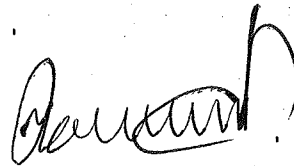
Note I: (a). Through the notification issued in G.O.Ms. No. 581, Revenue(Regn-I)Dept, Dt: 30.11.2013, the rate of the stamp duty in respect of instruments Article 6(B) is reduced w.e.f.02.12.2013 as follows:	
<u>Instrument Rate of duty whether adjustable</u>	
i) Sale Agreement with possession Adjustable	4%
ii) Sale Agreement without possession Not adjustable	0.5%
iii) Agreement of sale-cum-G.P.A only is Adjustable	5% 4%
iv) Development/Construction Agreement Not adjustable	0.5%
v) Development Agreement-cum-G.P.A Not adjustable	1%
vi) Construction Agreement-cum-G.P.A Not adjustable	1%

The copy of the Schedule IA of the Stamp Act is filed herein as **Annexure No.**

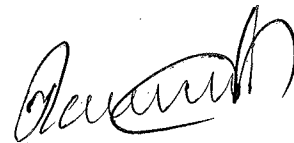
RD -4.

14. A careful perusal of the above clause of the Indian Stamp Act makes it clear that the Respondent/Claimant even to initiate the present arbitration proceedings and to get their claims adjudicated must have a valid legal agreement and the Petitioner herein is advised to submit that a valid agreement means an agreement which is duly stamped and registered if necessary.

15. In the present case, the MOU dated 16.10.2016 through which the Respondent/Claimant is seeking adjudication is chargeable under Article 6-B of Schedule I-A of the Indian Stamp Act and as mentioned, 0.5% of the total value is to be paid as Stamp duty.



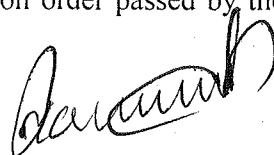
16. It is submitted that even after the said objection has been raised in the Arb. Appl No. 224 of 2022, the Respondent/Claimant failed to pay the mentioned stamp duty and is seeking adjudication of the dispute under the agreement through the present arbitration tribunal and the same is not valid unless the same is properly stamped and registered if necessary.
17. It is submitted that unless and until Respondent/Claimant pays deficit stamp duty and an additional penalty of 10 times is paid, the Memorandum of Understanding dated 06.10.2016 cannot be looked into by the arbitration Tribunal and hence, the present proceedings have to be terminated unless the deficit stamp duty is paid by the Respondent/Claimant.
18. The Petitioners herein are advised to submit that a party can always question the validity of the arbitration agreement before the Hon'ble Tribunal and to that extent; the tribunal has the power to adjudicate the issue. A perusal of Section 16 (1) of the act, makes it very clear that the validity of the arbitration agreement can be adjudicated by the Hon'ble tribunal under the said provision. The validity of the arbitration agreement is not only with regard to the consensus of the parties but also with regard to the validity under law and payment of stamp duty and registration if required.
19. As mentioned supra, in the present case, it is reiterated that the Memorandum of Understanding dated 06.10.2016 entered between the Respondent and the Claimant is in the nature of the Construction Agreement and since the aforementioned Memorandum of Understanding is unstamped and the stamp duty



which is levy-able to the Construction Agreement under article 6B of Schedule I-A of Indian stamp act is 0.5%, as such, the Respondent/Claimant has to pay a stamp duty of 0.5% of the value with additional 10 times Penalty.

20. It is respectfully submitted that the cause of action to appoint an arbitrator would commence from the breaking point i.e., in the present case from 23.05.2019 when the claimant had terminated the MOU dated 06.10.2016 therefore invocation of Arbitration as well as filing of section 11 should be within 3 years from 23.05.2019 i.e., on or before 23.05.2022. As per Article 137 of the Limitation Act 1963, the limitation for the appointment of an Arbitrator is 3 years from the date of cause of action, therefore as the claimant had filed Section 11 application on 29.09.2022 which is beyond the 3 years limitation from 23.05.2019 the present Arbitral proceedings including but not limited to the appointment of an the arbitrator is barred by law of limitation. Even otherwise also as per the Respondent/Claimant it had invoked arbitration clause on 19.07.2019 and even from there if the three year limitation is taken then the present arbitral proceeding including but not limited to the appointment of an arbitrator is barred by law of limitation since Section 11 application was filed 29.09.2022 which is beyond period of limitation i.e., 3 years.

21. It is settled law that an issue of limitation can be decided by the Arbitral Tribunal under section 16 of the Arbitration and Conciliation Act, and therefore considering the above facts and events this Hon'ble Tribunal may be pleased to reject the claims of the Claimant as barred by law of limitation. It is also pertinent to mention here that the Covid extension limitation order passed by the Hon'ble

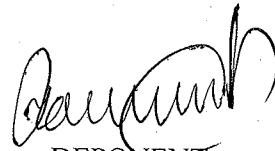


Supreme Court would not come in aid to the Claimants since such limitation would also expire on 30.05.2022.

22. Therefore it is clear that the constitution of the Arbitral Tribunal and the claims sought by the claimant are barred by law of limitation, and therefore this Hon'ble Tribunal may be pleased to terminate the Arbitration proceedings as barred by law.

In view of the above facts and circumstances, the Hon'ble Tribunal may be pleased to rule the subject Memorandum of Understanding dated 06.10.2016 through which the Respondent/ Claimant is seeking adjudication of Arbitral tribunal as invalid because of insufficient stamp duty, and barred by law of limitation and further terminate the arbitration proceedings by awarding costs, and pass any order or orders which this tribunal may deem fit and in circumstances of the case to meet the ends of justice.

Sworn and signed before me
On this the 22nd day of July, 2024



DEPONENT

Advocate: Hyderabad

BEFORE THE ARBITRAL TRIBUNAL COMPRISING OF
HON'BLE JUSTICE (Retd.) Sri. G. YETHIRAJULU (SOLE ARBITRATOR)
FORMER JUDGE, ERSTWHILE HIGH COURT OF STATE OF ANDHRA
PRADESH

I.A. No. OF 2024

IN

Arb. No. 10 OF 2024

(Arising out of Arb. Appl No 224 of 2022
Before the Hon'ble High Court for the State of Telangana at Hyderabad)

In the matter between:

1. Y. RAVINDER REDDY
S/o. Shri Bapu Reddy, Aged about 56 Years,
R/o. H. No. 2-20, Mallareddy Nagar,
Prasanth Nagar, Siddipet-502103
 2. YELLU VIJAY BHASKAR REDDY
S/o. Shri Bapu Reddy, Aged about 54 Years,
R/o. H. No. 2-20, Mallareddy Nagar,
Prasanth Nagar, Siddipet-502103
 3. YELLU RAJI REDDY
S/o. Shri Bapu Reddy, Aged about 50 Years,
R/o. H. No. 2-20, Mallareddy Nagar,
Prasanth Nagar, Siddipet-502103
 4. YELLU SRIKANTH REDDY
S/o. Shri Sanjeev Reddy, Aged about 44 Years,
R/o. H. No. 2-20, Mallareddy Nagar,
Prasanth Nagar, Siddipet-502103
-
5. S. SOWMYA
D/o Yellu Bapu Reddy, Aged about 43 Years,
R/o. H. No. 2-20, Mallareddy Nagar,
Prasanth Nagar, Siddipet-502103

6. YELLU MAHENDER REDDY
S/o. Yellu Bapu Reddy, Aged about 45 Years,
R/o. H. No. 2-20, Mallareddy Nagar,
Prasanth Nagar, Siddipet-502103

7. YELLU SRINIVAS REDDY
S/o. Yellu Bapu Reddy, Aged about 53 Years,
R/o. H. No. 2-20, Mallareddy Nagar.
Prasanth Nagar, Siddipet-502103

8. YELLU RUKKAMMA
W/o. Yellu Bapu Reddy, Aged about 75 Years,
R/o. H. No. 2-20, Mallareddy Nagar,
Prasanth Nagar, Siddipet-502103

...Petitioners/Respondents

And

M/s. Modi Realty (Siddipet) LLP
Represented by Sitarmanjaneyalu Burri,
5-4-187/3&4, II Floor, Soham Mansion,
M.G. Road, Secunderabad - 500003

...Respondent/Claimant

**PETITION FILED UNDER SECTION 16 OF THE ARBITRATION AND
CONCILIATION ACT, 1996**

It is therefore prayed before this Hon'ble Court that in the view of the above facts and circumstances, the Hon'ble Tribunal may be pleased to rule the subject Memorandum of Understanding dated 06.10.2016 through which the Respondent/ Claimant is seeking adjudication of Arbitral tribunal as invalid because of insufficient stamp duty, and barred by law of limitation and further terminate the arbitration proceedings by awarding costs, and pass any order or orders which this tribunal may deem fit and in circumstances of the case to meet the ends of justice.

Date: 22.07.2024

Place: Hyderabad


Counsel for the Petitioners

**BEFORE THE ARBITRAL TRIBUNAL
COMPRISING OF
HON'BLE JUSTICE (Retd.) Sri. G.
YETHIRAJULU (SOLE ARBITRATOR)
FORMER JUDGE, ERSTWHILE HIGH
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...Respondent/Claimant

PETITION FILED UNDER SECTION
16 OF THE ARBITRATION AND
CONCILIATION ACT, 1996

Filed on: 22.07.2024

Filed by: *P. Vanushi and*
M. Pramod
Advocate

COUNSEL FOR PETITIONERS