

ARB-36-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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ARB-36-2023 (O & M)

Date of decision:31.01.2024

M/S DRDC INFRACON PVT. LTD.

... PETITIONER

VS.

S.S. BUILDERS

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Anshul Mittal, Advocate,
Ms. Meghna Mukherjee, Advocate and
Mr. Sachin Jain, Advocate for the petitioner.

Mr. Shvetanshu Goel, Advocate
for the respondent.

SUVIR SEHGAL J. (ORAL)

1. Instant petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act"), for appointment of an Arbitrator.

2. Counsel for the petitioner submits that work agreement dated 10.02.2021, Annexure P-1, was executed between the petitioner and the respondent and Clause 10 thereof stipulates reference of disputes to an Arbitrator. Counsel submits that pursuant to the agreement, the petitioner executed the work and submitted running bills, which were duly verified by an authorized representative of the respondent. He has also made a

reference to the details of the payments received and the balance amount due (at pages 66 and 67 of the paper-book). He submits that whatsapp chat, Annexure P-4, was exchanged between the parties before serving a legal notice dated 08.06.2022, Annexure P-5. Counsel submits that the arbitration clause was invoked by legal notice dated 05.09.2022, Annexure P-6, and both the notices, Annexures P-5 and P-6, have remained un-responded.

3. Petition has been contested by the respondent by filing a written statement *inter alia* taking the plea that the work agreement, Annexure P-1, is a forged and fabricated document as the signatures on the agreement are not that of sole proprietor/authorized signatory of the respondent. He has made a reference to the signatures given by the respondent in the Bank, Annexure R-1. Still further, he submits that a separate agreement, Annexure P-2, was executed by the respondent with another firm. Counsel for the respondent has placed reliance upon the judgment of the Supreme Court in *Magic Eye Developers Pvt. Ltd. Versus M/s Green Edge Infrastructure Pvt. Ltd. & Ors. Etc.* in 2023 (8) SCC 50.

4. I have considered the submissions made by counsel for the parties.

5. A perusal of the response filed by the respondent shows that despite the fact that notices, Annexures P-5 and P-6, were served upon it, it chose not to respond to them. In case, the notices were based on a fabricated document, the natural human response is to deny the agreement. However, this was not done by the respondent and rather a

stand has been taken by him in the reply filed before the Court that the document is forged. It is obvious that the stand is an after thought and deserves to be rejected. Furthermore, every prudent person uses different signatures for banking transactions. Therefore, the reliance by the respondent upon his signature, Annexure R-1, in the bank, would not advance his case. In any case, this Court does not intend to carry out an exercise to compare the signatures while deciding a petition under Section 11 (6) of the Act.

6. From the material on the record, this Court is *prima facie* satisfied that an agreement exists between the parties, which contains an arbitration clause. Petitioner has invoked the clause by serving notice, Annexure P-6. In view thereof, prayer made in the petition, deserves to be accepted.

7. Accordingly, petition is allowed. Sh. V.K. Maheshwari, Principal Judge, Family Court (Retd.), H. No.85, Sector 30, Gurugram-122001, Mobile No.9910384671, is appointed as the sole Arbitrator to adjudicate the dispute between the parties, subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to adjudicate the dispute between the parties.

8. Parties are directed to appear before the learned Arbitrator on day, time and place to be fixed and communicated by the learned Arbitrator at his convenience.

9. The arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.

10. The arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.

11. It is clarified that the reference shall be subject to the petitioner's complying with all the requirements of the agreement.

12. Liberty is granted to the parties to raise all the available pleas before the learned Arbitrator.

13. Copy of the order be sent to the learned arbitrator.

14. As the main case has been disposed of, no order is called for on the miscellaneous applications, which stands disposed of.

31.01.2024

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(SUVIR SEHGAL)

JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No