

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(237)

ARB-165-2020 (O&M)
Date of decision:- 01.05.2024

NDPS Computers Pvt. Ltd.

... Petitioner

Versus

M/s Aldiablos Infotech Pvt. Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Arun Luthra, Advocate for the petitioner.

**Respondents No.1 and 2 proceeded against ex-parte by this
Court vide order dated 06.07.2023.**

Mr. Anoop Verma, Advocate for the respondent No.3.

SUVIR SEHGAL, J. (ORAL)

CM-8908-CII-2020

1. Exemption, as prayed for, is granted.
2. Application is allowed.

Main case

1. At the outset, counsel for the petitioner seeks and is granted permission to give up the claim qua respondent No.4. On his request, name of respondent No.4 is deleted from the array of parties.
2. By way of instant petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short “the Act”), petitioner has approached this Court for appointment of an Arbitrator to adjudicate the disputes between the parties.
3. Counsel for the petitioner submits that a Memorandum of Understanding (MOU) for outsource work was executed between the parties

on 16.02.2015, Annexure P-1 and Clause 8, thereof, contains an Arbitration Clause. Counsel submits that the petitioner incurred expenses for setting up a call centre for undertaking the work. Some payment was made to the petitioner and by representation dated 01.04.2017, Annexure P-2, he claimed balance amount of Rs.8,33,040,- along with other claims. Counsel submits that e-mail, Annexure P-3, was received from respondent No.3 on 07.04.2017, wherein he stated that his liability is around Rs.3-5 lacs. Counsel submits that the petitioner approached this Court by filing a petition (ARB-40-2018) for appointment of an Arbitrator, but it was withdrawn as the petitioner had not served a notice invoking the Arbitration Clause. Counsel submits that after serving notice dated 10.07.2020, Annexure P-4, petitioner has approached this Court again for appointment of an Arbitrator.

4. Upon service, respondent No.3 has filed a reply, opposing the petition. It has been submitted that respondent No.3 is not a signatory to the MOU, Annexure P-1, and that respondent No.3 is not liable to pay the amount. Respondents No.1 and 2 were proceeded against exparte.

5. I have heard counsel for the parties and considered their respective submissions.

6. Even though, respondent No.3 is not the signatory to the MOU, Annexure P-1, but he has not denied that he is the Chairman-cum-Managing Directory of M/s Aldiablos Infotech Pvt. Ltd., who had entered into MOU, Annexure P-1, with the petitioner through one of its Directors-respondent No.2. E-mail, Annexure P-3, sent by respondent No.3 have also not been denied by him. Respondent No.3, therefore, cannot wriggle out of the MOU and the Arbitration Clause. Accordingly, the prayer made in the petition deserves to be accepted.

7. Resultantly, petition is allowed. Sh. Bhupesh Dogra, Advocate., resident of Flat No. 403, Tower-E, Victoria Heights, Peer Muchalla, Sector 5, Zirakpur, SAS Nagar, Mohali, Mobile No. 9780622168 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.
8. Parties are directed to appear before the Arbitrator on 06.06.2024 at 11:00 A.M. at the address mentioned above or at any other place, time or date to be fixed by the Arbitrator.
9. Fee shall be paid in accordance with the Fourth Schedule of the Act, as amended.
10. Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the Act.
11. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.
12. Needless to mention that all the questions arising between the parties in this matter shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.
13. Copy of the order be sent to the appointed Arbitrator.

01.05.2024
Kamal

(SUVIR SEHGAL)
JUDGE

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