



ARB-463-2023(O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**ARB-463-2023(O&M)
Date of decision: 14.11.2024**

M/S MOTIA BUILTECH LLP

....APPLICANT

VS.

M/S MGF DEVELOPMENT LIMITED & ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**Present:** Mr. Rohan Markanda, Advocate for the petitioner.

Mr. H.P.S. Sandhu, Advocate for
Mr. A.S. Talwar, Advocate, for the respondents.

JAGMOHAN BANSAL, J (ORAL)

1. Through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '1996Act'), the applicant is seeking appointment of an Arbitrator.

2. The applicant entered into an agreement dated 24.12.2020. There is an arbitration clause in the said agreement. The dispute arose between the parties. The petitioner served notice dated 04.09.2023 upon respondent No.1 and its copy was forwarded to the remaining respondents. The respondent replied to said notice. The matter could not be amicably resolved, thus, applicant has preferred instant application. It is apt to notice that respondent replied to notice dated 04.09.2023 after filing of instant application.



3. Mr. Talwar submits that only respondents No.1 and 3 are party to the arbitration agreement, thus, application against respondents No.2 and 4 is not maintainable. He further submits that notice served upon respondent under Section 21 of 1996 Act is ambiguous. The applicant had not categorically invoked arbitration clause and common notice was sent to all the parties.

4. I have heard learned counsel for the parties and perused the record. The arbitration agreement is not disputed by the parties. The respondent is not claiming that there is no arbitration agreement. The respondent is primarily disputing language of notice dated 04.09.2023. The relevant extracts of notice dated 04.09.2023 are as under:-

“We are sanguine that better sense will prevail on you and you will, forthwith and unconditionally, withdraw your letters dated 26.07.2023 and 31.07.2023. We further hope that you will take all further necessary actions to comply with the salient obligations cast on you under the MOU and the SMOU.

We reiterate that we are not interested in any litigation, but when it comes to vindication of our rights, we shall not be found wanting. As the famous philosopher Sun Tsu has said “The greatest victory is one which is achieved without battle”. Similarly, we hope that both the parties shall set aside the rancour and take steps to achieve the ends set out in the MOU and the SMOU.

Without prejudice to the foregoing, in case you persist with your illegal actions propounded through letter dated 26.07.2023 and confirmed through letter dated 31.07.2023, this communication may be treated as invocation of clause 23 of the MOU (ARBITRATION). Towards that end, we call upon you to fix a meeting post-haste so as to endeavour to appoint a Sole Arbitrator by mutual consent. In case, we do not hear from you within a reasonable period hereafter, we shall be at liberty to pursue the remedies available to us as per contract and law.

Before we part with this communication, we deem it appropriate to mention that subsequent to the receipt of your



letters dated 26.07.2023 and 31.07.2023, we were exploring various options to reach out to you so as to discuss the matter and resolve the same without resorting to litigation. However, when we were convinced that you had closed all doors of negotiations, we were left with no option but to set out our position in black and white. Therefore, there has been no delay on our part in responding to your aforesaid communications”.

5. From the perusal of aforesaid extracts of notice dated 04.09.2023, it is evident that applicant had invoked arbitration clause and thereafter approached this Court. The respondent replied to notice after filing of instant application. The objections raised by respondents are just to avoid resolution of dispute through Arbitral Tribunal.

6. Mr. Markanda concedes that only respondents No.1 and 3 are party to arbitration agreement, thus, Arbitral Tribunal may be appointed *qua* them.

7. Conditions to invoke power conferred by Section 11(6) of 1996 Act stand satisfied, thus, I hereby appoint a sole Arbitrator to adjudicate the dispute between the parties.

8. Mr. Justice Rajbir Sehrawat, Retired Judge of this Court, residing at House No. 3408, Sector 24, Chandigarh, Mobile No. 7347025005 is hereby appointed as a Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements. The learned Arbitrator is requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

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

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

11. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the 1996 Act.

12. Needless to mention, parties would be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.

13. A request letter along with copy of this order be sent to Mr. Justice Rajbir Sehrawat.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

14.11.2024
Poonam Sharma

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No