



ARB-335-2019

-1-

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

242+1

ARB-335-2019

Date of Decision: 27.11.2024

Mahavir Singh

...Applicant

Versus

M/s Aggarwal Developers Private Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Mukesh Rao, Advocate,
Mr. Shubham Aneja, Advocate,
Mr. Vishal Garg Narwana, Advocate,
Mr. Om Pal Potlia, Advocate and
Mr. Nitin Sachdeva, Advocate for the applicant

Mr. Shailabh, Advocate,
Mr. Saurabh Gautam, Advocate and
Ms. Arshya Arora, Advocate for respondent Nos.2 and 3

Respondent No.1 (*ex-parte* as per order dated 10.03.2023)

JAGMOHAN BANSAL, J. (Oral)

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

2. The applicant entered into agreement dated 14.03.2007 (Annexure A-1) with M/s Aggarwal Developers Private Limited (respondent No.1). As per said agreement, the applicant gave rights to the respondent to develop his land. There is an arbitration clause in the said agreement. On the basis of aforesaid agreement, M/s Aggarwal Developers Limited entered into another agreement dated 14.01.2011 (AnnexureA-3) with M/s Y.J.



Infrastructure Private Limited (respondent Nos.2 and 3). As per said agreement, the conditions of agreement dated 14.03.2007 will remain as it is.

3. Learned counsel for respondent Nos.2 and 3 submits that indubitably there is an arbitration clause in the agreement executed between the applicant and respondent No.1, however, there is no specific reference of arbitration agreement in the agreement executed between applicant and respondent Nos.1 to 3. In support of his contention, he relies upon judgment of Supreme Court in ***NBCC (India) Limited v. Zillion Infraprojects Pvt. Ltd., (2024) 7 SCC 174.***

He further submits that the respondents have already made full and final payment to the applicant and a settlement deed was also executed between the parties.

4. As per the agreement executed between the parties, the respondents had to develop land owned by the applicant. The respondent is not disputing that they had taken over possession of the land and thereafter, developed the same. The foundation of taking possession and further development was agreement dated 14.03.2007 executed between the parties.

5. A Constitution Bench in ***Cox and Kings Ltd. v. SAP India Pvt. Ltd., (2024) 4 SCC 1*** has held that definition of “parties” under Section 2(1)(h) read with Section 7 of 1996 Act includes both the signatory as well as non-signatory parties. The conduct of non-signatory parties could be an indicator of their consent to be bound by the arbitration agreement. The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non signatory parties.



6. In the case in hand, respondent Nos.2 and 3 entered into an agreement with the applicant as well as respondent No.1. Indubitably, there is an arbitration clause in the first agreement executed between the applicant and respondent No.1. The respondent Nos.2 and 3 have acted upon agreements executed between the parties and to avoid their liabilities are claiming that they are not party to the arbitration agreement. The case of applicant is squarely covered by judgment of Supreme Court in *Cox and Kings Ltd. (supra)*. All the issues raised by respondents need to be adjudicated by Arbitrator.

7. In the wake of above discussion and findings, I am of the considered opinion that 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 Rameshwar Singh Malik, Retired Judge of this Court, residing at B-13, Mayflair Gardens, Hauz Khas, August Kranti Marg, New Delhi, Mobile No.7837049206 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.

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



ARB-335-2019

-4-

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. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the Arbitral Tribunal shall proceed without being prejudiced by observations of this Court.

14. A request letter along with copy of this order be sent to Mr. Justice Rameshwar Singh Malik.

(JAGMOHAN BANSAL)
JUDGE

27.11.2024*Mohit Kumar*

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