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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 357/2023 & I.A. 19922/2023**

CRAFT TECH INFRA PROJECT LLP

..... Petitioner

Through: Mr. Anil Sharma, Mr. Arpit Sharma,
Mr. Sivesh Kaushik and Mr. Aman
Bhardwaj, Advs. (M. 9899123578)

versus

MR. RAJAT WADHWA

..... Respondent

Through: Ms. Dhreti Bhatia, Mr. Pratham
Sharma, Mr. Gurpreet Singh Gill,
Advs. (M. 7838111566)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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15.01.2024

1. This hearing has been done through hybrid mode.
2. The present is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 arising out of the agreement dated 15th November, 2018 executed between Mr. Rajat Wadhwa, Respondent and M/s Craft Tech Infra Project LLP, the Petitioner. By the said agreement, the Petitioner who is described as a contractor in the agreement, was to design and carry out the Civil & Interior works, electrical works in the office of the Respondent at Plot No.517, Udyog Vihar, Phase-3, Gurugram, Haryana. The scope of work is set out in Clause 1.1 of the said agreement and in terms of clause 1.2 of the agreement the work was to be completed within 45 days from 15th November, 2018 with a grace period of 7 days subject to timely payments.
3. The case of the Petitioner is that it performed its part of the contract in a professional manner and that a sum of Rs.68,41,000/- is due from the



Respondent. For the said purpose, a legal notice was issued by the Petitioner invoking the Arbitration clause on 7th November, 2023. However, since no response was received, the present petition has been filed.

4. In this petition, the Respondent has filed its objections/reply to the petition.

5. Ld. Counsel for the Petitioner submits that while the petition was signed by Mr. Nitesh Garg, inadvertently, the wrong board resolution was filed by the Petitioner in favour of Mr. Jasbir Singh. Thus, he submits that the application being ***I.A.19922/2023*** has been filed seeking to replace the board resolution and that the said defect in the petition is at best a curable defect.

6. The case of the Respondent is four-fold, which is as under:

- The agreement filed by the Petitioner is interpolated/forged;
- The Claims are barred by limitation;
- The dispute itself is not arbitrable;
- The Petition is not properly filed owing to lack of proper board resolution in favour of the person signing.

7. These above submissions of the Respondent Mr. Wadhwa who appears in person are controverted by Ld. Counsel Mr. Sharma for the Petitioner. Ld. Counsel submits that the last payment was received by the Petitioner on 13th February, 2020 of a sum of Rs.2 lakhs and thus, the invocation of the arbitration vide notice dated 7th January, 2023 is within the period of limitation. He further submits that the agreement has not been forged but owing to the discrepancy in the figure mentioned in Clause 3 has the contract value in words and in figures, in the copy which is lying with the Petitioner, the words have been matched with the numerals mentioned.



He submits that the discrepancy is proved from the copy of the agreement, which the Respondent himself has placed on record. He finally urges that the new Board Resolution deserves to be taken on record as it is only due to an inadvertent error that the wrong board resolution was filed.

8. The Court has heard Id. Counsel for the Petitioner as also the Respondent, who has appeared in person.

9. Insofar as the issue of forgery is concerned, a perusal of both the agreements would show that the contract value is mentioned differently in figures and in words. The Petitioner has sought to correct the words with his own signatures and match it with the figures. However, in the agreement filed by the Respondent, there is a mismatch between the two. The question as to what is the exact contract value would be an issue which is not to be determined in the present proceedings.

10. The Arbitration clause in the agreement between the parties reads as under:

“5. Governing Law and Arbitration

This Agreement shall be governed by and interpreted in accordance with the Laws of India. Any dispute or differences or claim arising out of or relating to this agreement, or any breach or alleged breach thereof, shall be finally settled by Arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be held in NEW DELHI by a Sole Arbitrator to be appointed by the Client. The law governing the arbitration proceedings shall be as per the provisions of the Arbitration & Conciliation Act, 1996 as amended from time to time. Courts of New Delhi alone shall have the exclusive jurisdiction to deal with the matters relating to this agreement.”



11. The Arbitration Clause between the parties, as contained in the agreement dated 15th November, 2018, is not disputed. The Id. Arbitrator would go into the issue as to what is the exact contract value, as to whether it is Rs.2,94,30,000/- or Rs.2,70,00,000/- as mentioned in words.

12. Insofar as the issue of limitation is concerned, the last payment being in February, 2020 the question as to limitation would also have to be adjudicated by the Id. Arbitrator, depending upon the nature of the claims raised. There may be some claims, which are barred by limitation or some which may not be. Irrespective, in a Section 11(6) of Arbitration and Conciliation Act, 1996 petition, this Court is of the view that considering the COVID-19 lockdown and the invocation dated 7th January, 2023 it is not possible for this Court to hold at this stage that all the claims would be time barred or barred by limitation.

13. Insofar as the correction/interpolation is concerned, the Petitioner ought not to have changed the agreement at the time of filing of the same as the original agreement having contained the discrepancy - in order to approach the Court under Section 11 of the Arbitration and Conciliation Act, 1996, the original agreement ought to have been filed as it is. On the issue of interpolation, evidence may be led before the Id. Arbitrator which would be examined. Moreover, the alleged interpolation or correction is not one which has persuaded this Court to hold that there was forgery or fabrication.

14. Insofar as the board resolution is concerned, a perusal of the resolution would show that the acts of Mr. Nitesh Garg have been ratified in the new board resolution. Accordingly, the said issue is a technical issue, which has been overcome by a fresh resolution dated 15th September, 2023. The fresh resolution is taken on record. **I.A.19922/2023** is, accordingly,



allowed and disposed of.

15. The arbitration clause being undisputed, the parties are referred to arbitration by a sole arbitrator under the aegis of the Delhi International Arbitration Centre. Accordingly, **Mr. Samrat Nigam, Advocate (M: 9810424476)** is appointed as the Sole Arbitrator. The contentions raised, as recorded in this order are left open to be adjudicated by the Sole Arbitrator.

16. Ld. Counsel for the Respondent submits that he has also filed a police complaint in respect of the alleged forgery. It is made clear that the arbitral proceedings shall have no effect on the said police complaint.

17. The arbitration shall be conducted as per the rules of DIAC.

18. The petition is disposed of in these terms.

PRATHIBA M. SINGH, J.

JANUARY 15, 2024/dk/am