



MAJESTY LEGAL  
Advocates & Solicitors

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**“DISMISSAL OF ARBITRATION APPLICATIONS DUE TO LACK OF PRIMA FACIE  
ARBITRATION AGREEMENT”**

**“SRI SAI KRISHNA CONSTRUCTIONS VS HARVINS CONSTRUCTIONS PLIMITED”**

Hon'ble High Court of Telangana, in the case of *Sri Sai Krishna Constructions vs Harvins Constructions Plimited*<sup>1</sup>, Hon'ble High Court dismissed applications under Section 11(6) seeking appointment of an Arbitrator. Hon'ble court ruled that the applicants failed to establish prima facie existence of an arbitration agreement. Dispute arose between a Partnership Firm and a Private Limited Company over civil engineering sub-contract agreements related to the Telugu Ganga Project. Despite assertions from the applicant's counsel regarding the validity of the arbitration clause, Hon'ble court found that crucial signatures were absent on initial pages of the relevant agreements, casting doubt on the existence of a valid arbitration agreement. Hon'ble court declined to appoint an arbitrator, emphasizing the need for a clear prima facie case to support Arbitration under the law.

TEAM MAJESTY LEGAL<sup>2</sup>

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<sup>1</sup> 2024 LiveLaw (TS)103

<sup>2</sup> Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**

**ARBITRATION APPLICATION Nos.221 of 2023 and 32 of 2024**

**COMMON ORDER:**

Ms. D.Neeharika Reddy, learned counsel for the applicant.

Mr. V.Ravinder Rao, learned Senior Counsel representing Ms. Sunita Nawandar, learned counsel for the respondent.

2. By means of these applications under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), the applicant seeks appointment of an arbitrator.

3. Facts giving rise to filing of these applications briefly stated are that the applicant is a Partnership Firm registered under the provisions of the Partnership Act, 1932. The applicant is engaged in the business of construction works and executes contracts for civil engineering works. The respondent is a Private Limited company and is engaged in the business of procuring civil

engineering works by tendering with Public Works Department. The respondent gets the work executed by engaging specialists in the field by engaging the sub contractor.

4. The case of the applicant is that the respondent has engaged the applicant as sub-contractor by executing sub-contract agreement for 9 out of 10 works. It is the case of the applicant that in respect of Telugu Ganga Project awarded by the erstwhile Government of Andhra Pradesh, the sub-contract between the parties can be inferred from the correspondence and business communication. As per the averments made in the applications, sub-contract agreements in respect of works in question were executed on 3<sup>rd</sup> of October, 2011 between the parties.

5. Clause 12 of the aforesaid agreements executed between the parties contains the arbitration clause. The dispute had arisen between the parties. The applicant sent a legal notice dated 05.05.2022 by which a sums of Rs.27,43,08,423/- and Rs.23,56,78,115/- were demanded.

The respondent submitted a reply on 08.05.2022 in which claim of the applicant was denied.

6. The applicant thereupon sent a notice dated 14.06.2022 seeking appointment of an arbitrator. However, the respondent did not agree for appointment of arbitrator. Hence, these applications.

7. Learned counsel for the applicant submitted that the respondent is the signatory to the agreements dated 03.10.2011 and the issue of validity of the arbitration agreement can be examined by the arbitrator under Section 16 of the Act. It is further submitted that the contention that the agreement is forged and fabricated is an afterthought by the respondent. It is contended that the issue with regard to validity and existence of an arbitration agreement be referred for adjudication by the arbitrator.

8. On the other hand, learned Senior Counsel for the respondent submitted that this Court proceeding under Section 11(6) of the Act is *prima facie* required to satisfy itself with regard to existence of arbitration clause. While

inviting the attention of this Court to the admitted agreement and the agreements in the instant applications, it is pointed out that the agreements in the instant applications have been written on the same stamp paper in which agreement dated 03.10.2011 which is subject matter of Arbitration Application No.217 of 2023 in which arbitrator has already been appointed, has been written. It is further submitted that first three pages of the agreements do not contain the signature of the parties and therefore, in the absence of *prima facie* material to establish the existence of an arbitration clause, the reference cannot be made to arbitration.

9. I have considered the rival submissions and perused the record.

10. Section 7 of the Act defines arbitration agreement to mean an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. In **Vidya Drolia vs. Durga**

**Trading Corporation**<sup>1</sup> the Supreme Court has held as under:

**“21.** The term “agreement” is not defined in the Arbitration Act, albeit it is defined in Section 10 of the Contract Act, 1872 (for short “the Contract Act”), [**“10. What agreements are contracts.—**All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.”] as contracts made by free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not thereby expressly declared to be void. Section 10 of the Contract Act also stipulates that aforesaid requirements shall not affect any law in force in India (and not expressly repealed) by which a contract is required to be made in writing, in presence of witnesses or any law relating to registration of documents. Thus, an arbitration agreement should satisfy the mandate of Section 10 of the Contract Act, in addition to satisfying other requirements stipulated in Section 7 of the Arbitration Act.

**22.** Sections 12 to 18 of the Contract Act state when a person can be said to be of a sound mind for the purpose of contracting and define the expressions

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<sup>1</sup> (2021) 2 SCC 1

“consent”, “free consent”, “coercion”, “undue influence”, “fraud” and “misrepresentation”. Sections 19 to 23 relate to voidability of agreements, the power to set aside contracts induced by undue influence, when both the parties are under mistake as to a matter of fact, effect of a mistake as to the law, effect of a mistake by one party as to a matter of fact and what considerations and objects are lawful and unlawful. Sections 24 to 30 relate to void contracts and Sections 26 and 27 therein state that agreements in restraint of marriage and agreements in restraint of trade, respectively are void, albeit Exception (1) to Section 27 saves agreements for not carrying out the business of which goodwill is sold. Section 28 of the Contract Act states that agreements in restraint of legal proceedings are void, but Exception (1) specifically saves contracts by which two or more persons agree that any dispute, or one which may arise between them, in respect of any subject or class of subjects shall be referred to arbitration.

**23.** Arbitration agreement must satisfy the objective mandates of the law of contract to qualify as an agreement. Clauses (g) and (h) of Section 2 of the Contract Act state that an agreement not enforceable in law is void and an agreement enforceable in law is a contract. As a sequitur, it follows that an arbitration agreement that is not enforceable in law is void and not legally valid.

**24.** Sub-section (1) of Section 7 of the Arbitration Act ordains that the arbitration agreement should be in respect of disputes arising from a defined legal relationship, whether contractual or not. The expression “legal relationship”, again not defined in the

Arbitration Act, means a relationship which gives rise to legal obligations and duties and, therefore, confers a right. These rights may be contractual or even non-contractual. [Legal relationship will be normally followed by certain immediate or remote consequences in the form of action or non-action by the judicial and executive agents of the society as distinct from purely private affairs or other events which have nothing to do with law. Legal relationship exists in every situation that is or may be procedurally asserted for a declaration or denial of a right or for imposition of a sanction or any other purpose within the scope of adjudicative action. In actual practice, objection regarding defined legal relationship is seldom raised and tested.] Non-contractual disputes would require a separate or submission arbitration agreement based on the cause of action arising in tort, restitution, breach of statutory duty or some other non-contractual cause of action. [*Russell on Arbitration*, 24th Edn., Statutory Definition, Non-Contractual Claims, Para 2-004.]

**25.** Sub-section (2) of Section 7 is of some importance as it states that an arbitration clause may be in the form of a separate agreement or form a part of the underlying or another contract. Sub-section (3) of Section 7 of the Arbitration Act states that the arbitration agreement shall be in writing, that is, the agreement should be evidenced in writing. By sub-section (4) the term “arbitration agreement in writing” would include any agreement by exchange of letters, telegrams, electronic mails or communications which provide a record of the agreement or exchange of statements of claim and defence in which one party claims the existence of the agreement and the other



party does not deny it. Sub-section (5) of Section 7 states that reference in a contract to a document containing an arbitration clause would constitute a valid arbitration agreement if the contract is in writing and reference is made to the arbitration clause that forms a part of the contract.”

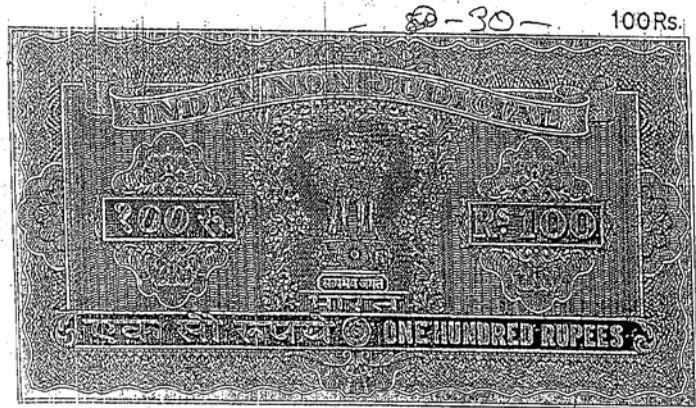
11. The Court while exercising the jurisdiction under Section 11(6) of the Act has to conclusively determine about the existence and validity of the arbitration agreement as the same goes to the root of the matter (see **Magic Eye Developers (Private) Limited v. Green Edge Infrastructure (Private) Limited**<sup>2</sup>).

12. Before proceeding further, it is apposite to take note of arbitration agreement dated 03.10.2011 in Arbitration Application Nos.217 of 2023, which is admittedly executed between the parties and the remaining two arbitration agreements, namely arbitration agreements, which is subject matter of these arbitration applications, namely A.A.Nos.221 of 2023 and 34 of 2024, which is in dispute. The arbitration agreements produced before this Court in the arbitration applications, namely A.A.Nos.217 of 2023, 221 of 2023 and 34 of 2024 are scanned as under:

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<sup>2</sup> (2023) 8 SCC 50

Arb Appl No. 217 of 2023



S.No. 7033... Dated 10/10/2011  
 Sold to S. Sai Krishna...  
 S/o. S. Sai Krishna...  
 For Harvins Constructions (P) Ltd. Hyderabad

*P. Srinivas*  
**P. SRINIVAS**  
 Stamp Vendor L.No. 74193  
 7-1-400/10, Ameerpet,  
 Balakrishna Road, Hyderabad-18.

SUB - CONTRACT AGREEMENT

This Agreement of Sub-Contract is drawn up and executed on this the 3<sup>rd</sup> day of October 2011, at Hyderabad

BY and BETWEEN

M/s. HARVINS CONSTRUCTIONS (P) LIMITED, a company incorporated under the Indian Companies Act, 1956, having its Registered Office at 8-2-322 / H, Road No 3, Banjara Hills, Hyderabad-500 034, represented by its Managing Director Sri A. Vamsee Krishna, hereinafter for brevity sake referred to as the "First Party".

AND

M/s. SRI SAI KRISHNA CONSTRUCTIONS, a partnership firm having its office at Flat No. 301, Dhruva-1, Srinivasa Village, Yousufguda, Hyderabad-500 033, represented by its Managing Partner Smt. G. Prathima, hereinafter for brevity sake referred to as the "Second Party".

Contd. Page 2

For M/s. Sri Sai Krishna Constructions

For HARVINS CONSTRUCTIONS (P) LTD.

*G. Prathima*  
Managing Partner

*A. Vamsee Krishna*  
Managing Director

PREAMBLE

WHEREAS the "First Party" has successfully obtained a Contract for the work of "Modernization of Sanjeevalah Sagar (Gajuladinne) Medium Irrigation Project in Kurnool District under JICA Programme for a Contract Price of Rs. 43.19 Crores" as awarded vide agreement No. SE/CKNL/12/2011-12 dated 22.07.2011.

AND WHEREAS the "First Party" desires to give said contract work of "Modernization of Sanjeevalah Sagar (Gajuladinne) Medium Irrigation Project in Kurnool District under JICA Programme for Contract Price of Rs. 43.19 Crores" on sub-contract basis, in view of their pre-occupation due to simultaneous execution of various other Contract Works in the States of Andhra Pradesh and Maharashtra.

AND WHEREAS, the "Second Party" is an established Civil Contractor and who came forward to undertake the execution and completion of the above contract work and approached the "First Party".

AND WHEREAS both the parties have had detailed discussions and concluded the contract on the terms and conditions contained hereunder and decided to reduce the same into writing for strict compliance.

NOW THEREFORE IT HAS BEEN AGREED BY AND BETWEEN THE PARTIES AND THIS SUB-CONTRACT AGREEMENT WITNESSES AS FOLLOWS:

1. The "Second Party" shall execute the Contract work of "Modernization of Sanjeevalah Sagar (Gajuladinne) Medium Irrigation Project in Kurnool District under JICA Programme for Contract Price of Rs. 43.19 Crores" as awarded vide agreement No. SE/CKNL/12/2011-12 dated 22.07.2011, on back-to-back sub-contract basis.
2. In consideration of the above work given on sub-contract basis to the "Second Party", the "First Party" shall be entitled to a Commission @ 4% on the Gross Bills.
3. The "First Party" shall pay the "Second Party" soon after receiving the payments from the Department for the work executed, after deducting the Commission @ 4% and other statutory deductions such as Sales Tax, Income Tax, Stampages and Workmen Compensation and CAR policy etc. and other deductions, if any, as per the Contract Agreement with the department.
4. The "First Party" shall issue a Certificate of Deduction of Tax under Sec. 194C of the Income Tax Act, 1961 to the "Second Party" for the amounts deducted as Tax deduction at Source (TDS) from out of the payments made to the "Second Party" @ 2% plus surcharge or as per the TDS rates applicable from time to time on the Gross Bills.

For M/s. Sri Sai Krishna Constructions

Mandating Partner

For H.A. VIN'S CONSTRUCTION

Managing Director

- 32
5. The "First Party" shall be entitled to adjust or recover the advances paid, if any, to the "Second Party" in the course of execution of the work, from and out of the payments due to the "Second Party", against the works executed by them.
  6. Any F.S.D. deducted by the Department in respect of the works executed by the "Second Party" shall be paid to them, soon after releasing the FSD payments from the Department by the "First Party" and after completion and handing over of the work to the Department.
  7. The "Second Party" shall maintain the necessary accounts in respect of the transactions involved in the Sub-Contract and also account for all the materials received from the Department.
  8. The "Second Party" shall execute the work given under this Sub-Contract as per the instructions / orders issued by the Departmental Authorities from time to time and present themselves at the time of periodical measurements of the work executed by them and also shall sign the measurement books.
  9. The "First Party" shall give necessary Authorization Letters to the "Second Party" as and when required for representing themselves before the appropriate authorities in relation to this Sub-Contract.
  10. The "First Party" shall extend to the "Second Party" such Co-operation as may be required from them during the course of the execution of work under this Sub-Contract.
  11. The "Second Party" shall indemnify the "First Party" and keep them indemnified for any loss / damages suffered by them by way of penalties levied or deposits forfeited by the Department for the delay in the execution of the work or for the defective execution in the work or for any other similar reasons.
  12. In case of any dispute or difference of opinion between the parties hereto, the same shall be referred to an Arbitrator whose Award shall be binding on the parties hereto.
  13. The Original of this Agreement is retained by the "First Party" and the copy of which duly signed by the parties hereto shall be retained by the "Second Party".

Cont. Page 104

For M/s Sri Sai Krishna Constructions

Managing Partner

For HARVINS CONSTRUCTIONS PVT. LTD.

Managing Director

33

In witness whereof the parties hereto have signed this Agreement on this the 3<sup>rd</sup> day of October, 2011.

First Party  
for Harvins Constructions Pvt.Ltd.

*[Signature]*  
A Vamsee Krishna  
Managing Director

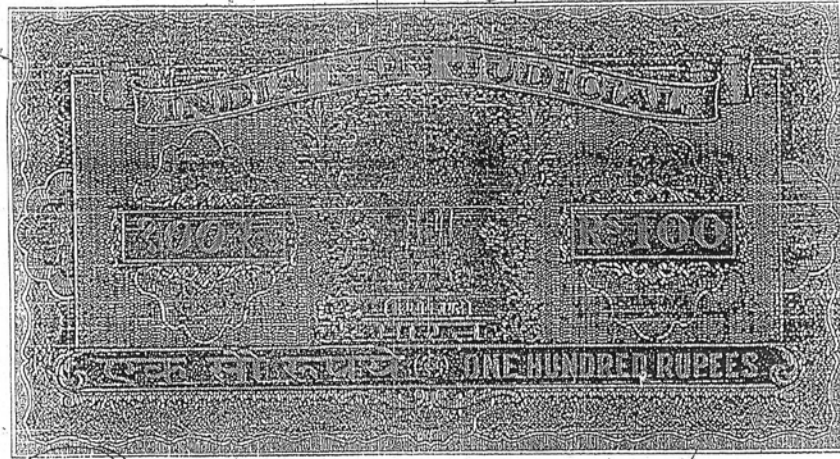
Second Party  
for Sri Saikrishna Constructions

*[Signature]*  
G Prathima  
Managing Partner

WITNESSES :

- 1) *[Signature]*  
(B. BHAKTA VASUDEVA REDDY)  
B-33, Mayur Apts, Begumpet  
Hyd. 16
- 2) *[Signature]*  
(K. Giridhar Kumar)  
H.No. 12-7-4516/7  
Pallepalli Nagar  
Hyderabad - 50018

Arb Appl. No. 221 of 2023



S. No. 7032 Dated 10/10/2011 Re. 100  
 Sold to A. V. Reddy  
 S/o. B. Raju Reddy A.O. 100  
 For whom Harvins Constructions (P) Ltd.

F. SRINIVAS  
 Stamp Vendor L.No. 74/93  
 7-1-400/10, Amecorpet,  
 Balkampet Road, Hyderabad-18.

Sub Contract Agreement

This Agreement of Sub Contract is drawn up and executed on this the 3<sup>rd</sup> day of October '2011 at Hyderabad.

By and Between

M/s Harvins Constructions (P) Limited – JSR (JV), 8-2-322/H, Road No3, Banjara Hills, Hyderabad represented by its Managing Director, Sri. A. Vamsi Krishna Reddy, aged about 45 years, hereinafter referred to as first party.

And

M/s Sri Sai Krishna Constructions, with its address at Flat No. 301, Dhruva, Srinivasa Village, Yousafguda, Hyderabad-33, represented by its Managing Partner and authorized representative Mrs. G. Prathima Reddy, aged about 41 years, hereinafter referred to as second party.

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Preamble:-

Whereas the "First Party" has successfully obtained a contract for the work of "Investigation, Design and Execution of Canal network system including Earth Work Excavation, Forming Embankment and Construction of CM & CD works and Lining of Canals up to sub minors and formation of field channel including structures to serve to an extent of 49500 Acres in Karimnagar Dist under Gangadhara Tank and its concerned gravity canals (Canals Network Package-I)" for a contract price of Rs 78,49,00,000/- as awarded vide agreement no: 01/EPC/2009-2010 Dated:- 16.07.2009.

And whereas the "First Party" desires to give said contract work of "Investigation, Design and Execution of Canal network system including Earth Work Excavation, Forming Embankment and Construction of CM & CD works and Lining of Canals up to sub minors and formation of field channel including structures to serve to an extent of 49500 Acres in Karimnagar Dist under Gangadhara Tank and its concerned gravity canals (Canals Network Package-I) for a contract price of Rs. 78,49,00,000/-" on sub contract basis. In view of their pre-occupation due to simultaneous execution of various other contract works in the states of Andhra Pradesh and Maharashtra.

And Whereas, the "Second Party" is an established Civil Contractor and who came forward to undertake the execution and completion of the above contract work and approached the "First Party".

And Whereas both the parties have had detailed discussions and concluded the contract on the terms and conditions contained hereunder and decided to reduce the same into writing for direct compliance.

NOW THEREFOR IT HAS BEEN AGREED BY AND BETWEEN THE PARTIES AND THIS SUB-CONTRACT AGREEMENT WITNESSES AS FOLLOWS:-

1. The "Second Party" shall execute the contract work of Investigation, Design and Execution of Canal network system including Earth Work Excavation, Forming Embankment and Construction of CM & CD works and Lining of Canals up to sub minors and formation of field channel including structures to serve to an extent of 49500 Acres in Karimnagar Dist under Gangadhara Tank and its concerned gravity canals for contract price of Rs.78.49 Cr" as awarded vide agreement No: 01/EPC/2009-2010 Dated:- 16.07.2009.



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3)

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2. In consideration of the above work given on Sub Contract basis to the Second Party, the "First Party" shall be entitled to a commission @6% on the Gross Bills.
3. The "First Party" shall pay the "Second Party" soon after receiving the Payments from the department for the works executed, after deducting the commission @ 6% and other statutory deductions such as sales Tax, Income Ta, Seignorage and workmen compensation and CAR Policy etc, and other deductions, if any, as per the contract agreement with the department.
4. The "First Party" shall Issue a Certificate of Deduction of Tax under Sec. 194C of the Income Tax Act, 1961 to the Second Party" for the amounts deducted as Tax.
5. The "First Party" shall be entitled to adjust or recover the advances paid, if any, to the "Second Party" in the course of execution of the work, from and out of the Payments due to the "Second Party" against the Works Executed by them.
6. Any FSD deducted by the Department in respect of the works executed by the "second Party" shall be paid to them, soon after releasing the FSD Payments from the Department by the First Party and after completion and handing over of the work to the Department.
7. The "Second Party" shall maintain the necessary accounts in respect of the transactions involved in the Sub-Contract and also account for all the materials received from the Department.
8. The "Second Party" shall executed the work give under this Sub-Contract as per the Instructions / order issued by the department authorities from time to time and present themselves at the time of periodical measurements of the work executed by them and also shall sign the measurement books.
9. The "First Party" shall give necessary authorization letter to the "Second Party" as and when required for representing themselves before the appropriate authorities in relation tot his Sub-Contract.
10. The "First Party" shall extend to the "Second Party" such cooperation as may be required from them during the course of the execution of work under this Sub-Contract.
11. The "Second Party" shall indemnify the "First Party" and keep them indemnified for any loss / damage suffered by them by way of penalties levied or deposits forfeited by the department for the delay in the execution of the work or for the defective execution in the work or for any other similar reasons.
12. In case of any dispute or defense of opinion between the parties hereto, the same shall be referred to an arbitrator whose award shall be binding on the parties hereto.
13. The Original of this agreement is retained by the "First Party" and the copy of which duly signed y the Parties hereto shall be retained by the "second Party".

Contd.....4





32  
:4:

In witness whereof the parties hereto have signed this Agreement on this the 3<sup>rd</sup> day of October, 2011.

First Party :

for Harvins Construction

*[Signature]*



A Vamsee Krishna  
Managing Director

Second Party

for Sri Saikrishna Constructions

*[Signature]*



G Prathima  
Managing Partner

WITNESSES :

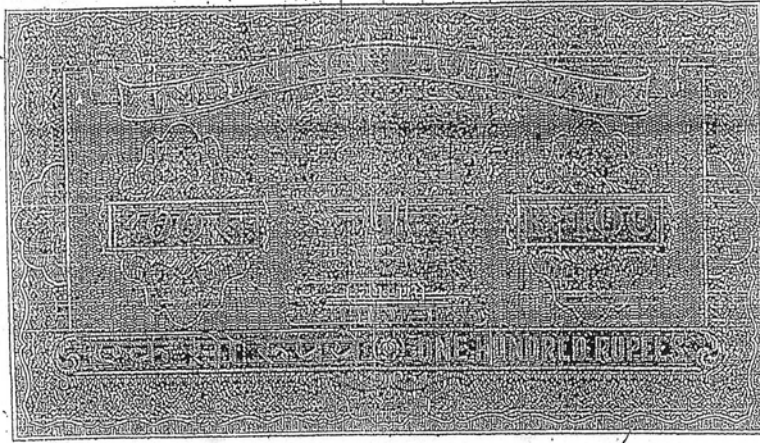
- 1) *[Signature]*  
(B. BHARATI VASALA RENDU)  
B1-35 Mayuri Apts, Begumpet  
Hyd. 16
- 2) *[Signature]*  
(V. Govindhar. Kumar)  
H-111-12-7-HS 16/7  
Pahadwan Nagar  
Hyderabad - 500018

Digitally signed by G Prathima, DN: cn=G Prathima, o=Sri Saikrishna Constructions, ou=Hyderabad, email=gprathima@saikrishnaconstructions.com

Acq. Appl 32 of 2024

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100RS.



S. No. 7032 Dated 18/10/2011  
Sold to Sri Sai Krishna  
S/o Sri Sai Krishna Reddy, Aged 45  
For Harvihs Constructions (P) Ltd. Hyd

*P. Srinivas*  
**P. SRINIVAS**  
Stamp Vendor L. No. 74/93  
7-1-400/10, Ameerpet,  
Bellampet Road, Hyderabad-10.

Sub Contract Agreement

This Agreement of Sub Contract is drawn up and executed on this the 3<sup>rd</sup> day of October '2011 at Hyderabad.

By and Between

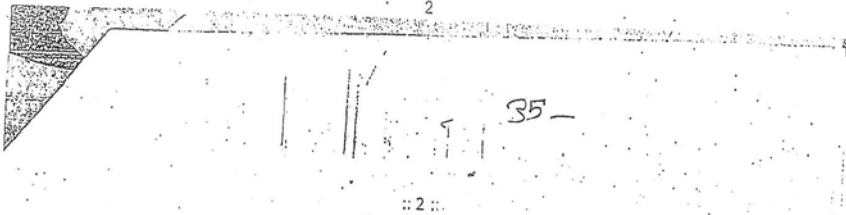
M/s Harvihs Constructions (P) Limited - JSR (JV), 8-2-322/H, Road No3, Banjara Hills, Hyderabad represented by its Managing Director, Sri. A. Vamsi Krishna Reddy, aged about 45 years, hereinafter referred to as first party.

And

M/s Sri Sai Krishna Constructions, with its address at Flat No. 301, Dhruva, Srinivasa Village, Yousafguda, Hyderabad-33, represented by its Managing Partner and authorized representative Mrs. G. Prathima Reddy, aged about 41 years, hereinafter referred to as second party.

Contd----2





:: 2 ::

Preamble:-

Whereas the "First Party" has successfully obtained a contract for the work of "Investigation, Design and Execution of Canal network system including Earth Work Excavation, Forming Embankment and Construction of CM & CD works and Lining of Canals up to sub minors and formation of field channel including structures to serve to an extent of 49500 Acres in Karimnagar Dist under Gangadhara Tank and its concerned gravity canals (Canals Network Package-I)" for a contract price of Rs 78,49,00,000/- as awarded vide agreement no. 01/EPC/2009-2010 Dated:- 16.07.2009.

And whereas the "First Party" desires to give said contract work of "Investigation, Design and Execution of Canal network system including Earth Work Excavation, Forming Embankment and Construction of CM & CD works and Lining of Canals up to sub minors and formation of field channel including structures to serve to an extent of 49500 Acres in Karimnagar Dist under Gangadhara Tank and its concerned gravity canals (Canals Network Package-I) for a contract price of Rs. 78,49,00,000/-" on sub contract basis. In view of their pre-occupation due to simultaneous execution of various other contract works in the states of Andhra Pradesh and Maharashtra.

And Whereas, the "Second Party" is an established Civil Contractor and who came forward to undertake the execution and completion of the above contract work and approached the "First Party".

And Whereas both the parties have had detailed discussions and concluded the contract on the terms and conditions contained hereunder and decided to reduce the same into writing for direct compliance.

NOW THEREFOR IT HAS BEEN AGREED BY AND BETWEEN THE PARTIES AND THIS SUB-CONTRACT AGREEMENT WITNESSES AS FOLLOWS:-

1. The "Second Party" shall execute the contact work of Investigation, Design and Execution of Canal network system including Earth Work Excavation, Forming Embankment and Construction of CM & CD works and Lining of Canals up to sub minors and formation of field channel including structures to serve to an extent of 49500 Acres in Karimnagar Dist under Gangadhara Tank and its concerned gravity canals for contact price of Rs.78.49 Cr" as awarded vide agreement No. 01/EPC/2009-2010 Dated:- 16.07.2009.

Contd .....3



- 36 -

:: 3 ::

2. In consideration of the above work given on Sub Contract basis to the Second Party, the "First Party" shall be entitled to a commission @6% on the Gross Bills.
3. The "First Party" shall pay the "Second Party" soon after receiving the Payments from the department for the works executed, after deducting the commission @ 6% and other statutory deductions such as sales Tax, Income Ta, Seignorage and workmen compensation and CAR Policy etc, and other deductions, if any, as per the contract agreement with the department.
4. The "First Party" shall Issue a Certificate of Deduction of Tax under Sec. 194C of the Income Tax Act, 1961 to the Second Party" for the amounts deducted as Tax.
5. The "First Party" shall be entitled to adjust or recover the advances paid, if any, to the "Second Party" in the course of execution of the work, from and out of the Payments due to the "Second Party" against the Works Executed by them.
6. Any FSD deducted by the Department in respect of the works executed by the "second Party" shall be paid to them, soon after releasing the FSD Payments from the Department by the First Party and after completion and handing over of the work to the Department.
7. The "Second Party" shall maintain the necessary accounts in respect of the transactions involved in the Sub-Contract and also account for all the materials received from the Department.
8. The "Second Party" shall executed the work give under this Sub-Contract as per the Instructions / order issued by the department authorities from time to time and present themselves at the time of periodical measurements of the work executed by them and also shall sign the measurement books.
9. The "First Party" shall give necessary authorization letter to the "Second Party" as and when required for representing themselves before the appropriate authorities in relation tot his Sub-Contract.
10. The "First Party" shall extend to the "Second Party" such cooperation as may be required from them during the course of the execution of work under this Sub-Contract.
11. The "Second Party" shall indemnify the "First Party" and keep them Indemnified for any loss / damage suffered by them by way of penalties levied or deposits forfeited by the department for the delay in the execution of the work or for the defective execution in the work or for any other similar reasons.
12. In case of any dispute or defense of opinion between the parties hereto, the same shall be referred to an arbitrator whose award shall be binding on the parties hereto.
13. The Original of this agreement is retained by the "First Party" and the copy of which duly signed by the Parties hereto shall be retained by the "second Party".



Contd.....4



In witness whereof the parties hereto have signed this Agreement on this the 3<sup>rd</sup> day of October, 2011.

First Party  
for Harvins Construction

*[Signature]*  
A Vamsee Krishna  
Managing Director



Second Party  
for Sri Saikrishna Constructions

*[Signature]*  
G Prathima  
Managing Partner



WITNESSES :

- 1) *[Signature]*  
(B. BHARATI VARSALA REDDY)  
81-85, Mayuri Apts, Begumpet,  
Hyd. 16
- 2) *[Signature]*  
(V. Girishan Kumar)  
H. No. 12-7-45/16/7  
Pahadwan Nagar  
Hyderabad - 50018

13. Thus, from perusal of sub-contract agreements, it is evident that arbitration agreement dated 03.10.2011 which is subject matter of Arbitration Application No.217 of 2023 has been executed on the stamp paper bearing S.No.7032. It contains the signature of the parties on all the pages. Surprisingly, the remaining two arbitration agreements dated 03.10.2011, which is subject matter of the instant cases, have also been executed on the same stamp paper bearing S.No.7032. The description of the work in both the sub-contracts is identical. The first three pages of the sub-contract agreements, in the instant cases, do not bear the signatures of the parties.

14. For the aforementioned reasons, the applicants have failed to prove *prima facie* existence of an arbitration agreement.

15. In the result, the applications fail and are hereby dismissed. No costs.

Miscellaneous applications pending, if any, shall stand closed.

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**ALOK ARADHE, CJ**

19.06.2024  
Pln