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

FAO(OS) 336/2013, C.M. APPL.11273/2013

M/S ULTRA TECH CEMENT LTD

..... Appellant

Through : Sh. V.K. Monga, Advocate.

versus

M/S SPORTINA PAYCE INFRA PVT LTD & ORS

..... Respondent

Through : Nemo.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **26.07.2013**

The present appellant is aggrieved by the order dated 03.05.2013 where learned Single Judge, on the defendants' application under Section 8 of the Arbitration and Conciliation Act relegated the parties to that alternative mode of dispute resolution. The relevant condition which found favour with the learned Single Judge is part of the document, i.e. the Purchase Order for supply of Ready Mix Concrete, dated 20.05.2008. Clause 22 of the said Purchase Order reads as follows:

"All disputes or differences whatsoever arising between us relating to the construction, concreting, deployment of men and machinery meaning and operation or effect of this contract & breach thereof shall be settled by Arbitration in accordance with the rules of arbitration & conciliation act of 1996 and the award made in pursuance thereof shall be binding on the parties. The venue of such arbitration shall be at Mumbai."

The appellant urged that there is no arbitral dispute and that the respondents did not raise any question of arbitration or even dispute the amount sought to be claimed. It was also submitted that the question of the amount sought to be recovered being security

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or that the defendant was entitled to withhold it cannot arise under the circumstances.

This Court is of the opinion that no interference is called for in respect of order sought to be impugned as to whether arbitral disputes exist or not which itself can be a question that can be agitated before the arbitrator. So far as the liability of the defendants to pay the amount is concerned, the Court is prima facie of the view that it itself constitutes a cause of action for the plaintiff to approach the Court and, therefore, was a dispute. In any event, no final opinion in the matter is being expressed. The rights of the parties to agitate all their contentions in the proceedings before the arbitral tribunal are reserved. The appeal is, therefore, without merit and is accordingly dismissed but subject to above terms.


S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JULY 26, 2013
'ajk'