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

+ **ARB.P. 482/2012 & 483/2012**

M/S JAYCON INFRASTRUCTURE LTD Petitioner
Through: Dr. P.C. Markanda, Sr. Adv. with Mr
Rajesh Markanda & Mr Virender Kumar Sharma,
Adv.

versus

M/S SOMA ENTERPRISE LTD Respondent
Through: Mr Arunabh Chowdhury, Mr G. Panmei,
Mr Barnali Chowdhury & Mr Vaibhav Tomar,
Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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11.07.2013

1. These are the petitions filed under Section 9 of the Arbitration & Conciliation Act, 1996. The principal ground on which the petitions are resisted by the respondent is that there is accord and satisfaction as between the parties; an argument which is based on the execution of a Termination-cum-Settlement agreement dated 29.06.2012 as between the parties. It was, therefore, the contention of the learned counsel for the respondent, to begin with, that, given the terms contained therein the matter could not be referred to arbitration.

2. Detailed arguments have been addressed by Dr. Markanda, learned senior counsel for the petitioner as well as the learned counsel for the respondent.

3. Learned counsel for the petitioner took me through the facts and circumstances of the case including two vital documents which were generated on 17.08.2011 and 08.06.2012. The documents are two certificates issued by the respondent wherein, it is categorically stated that the work-in-issue was executed by the petitioner quite satisfactorily. These documents are annexed as annexure P-6 and P-7. In support of his submission, Dr. Markanda also relied upon the ratio of the judgment of the Supreme Court in the case of *National Insurance Co. Ltd. vs Boghara Ployfabs Pvt. Ltd. (2009) 1 SCC 267*. He specifically stressed that, since coercion is alleged, not only on account of the fact that three weeks prior to the execution of Termination-cum-Settlement agreement a certificate was issued in favour of the petitioner that the work had been executed satisfactorily, but also for the reason that the bank guarantees issued by the petitioner, were in danger of being encashed; this was an issue which ought to be decided by the arbitrator.

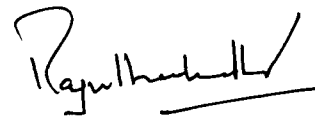
4. Mr Chowdhury, refuted this submission and relies heavily upon various correspondences as well as terms of the Termination-cum-Settlement agreement, to contend to the contrary.

5. However, after detailed arguments, both counsels agreed that in the fitness of things, in this particular matter, an arbitrator would have to be appointed and, this issue, amongst others, be left for determination by the learned arbitrator in line with the principle enunciated in paragraph 22 of the judgment of the Supreme Court in the case of *National Insurance Co. Ltd. vs Ployfabs Pvt. Ltd.*

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6. Accordingly, with the consent of the counsels for the parties, Mr Justice R.C. Lohati, a retired judge of the Supreme Court is appointed as the sole arbitrator in the matter. In view of this, the petitioner shall recall the mandate accorded to Mr Justice I.P. Vashisht, a retired judge of the Allahabad High Court. This agreement is made keeping in mind the expedition, as also the expenses, involved in having more than one arbitrator. Counsels also agree that the arbitration shall be governed by the Delhi International Arbitration Centre (DIAC) rules as well as the fee schedule stipulated therein. For this purpose, parties and their counsels shall appear before the DIAC on 26.07.2013 at 3.00 p.m.

7. The petitions are, accordingly, disposed of.



RAJIV SHAKDHER, J

JULY 11, 2013

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

+ ARB.P. 483/2012

M/S JAYCON INFRASTRUCTURE LTD Petitioner
Through: Mr Virender Kumar Sharma, Adv.

versus

M/S SOMA ENTERPRISE LTD Respondent
Through: Mr Arunabh Chowdhury & Mr Karma
Dorjee, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
% **26.07.2013**

IA No. 11667/2013 in Arb. P. No. 483/2012

1. The captioned application is filed to correct typographical errors which have crept in the order dated 11.07.2013. Learned counsel for the respondent says that he does not oppose the application, and thus, does not wish to file a reply to the same.

2. Accordingly the order dated 11.07.2013 stands corrected to the following extent:

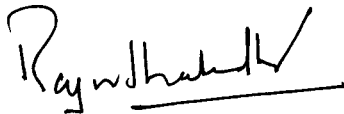
(i) The reference in the first line of paragraph 1 to *Section 9* of the Arbitration & Conciliation Act, 1996 would now be read as ***Section 11***.

(ii) The reference to the expression : "*in this particular matter*", in line 2 of paragraph 5 would now stand corrected to ***in these matters***.

(iii) In paragraph 6 the suffix appended to the name of the learned arbitrator will stand corrected to read as : ***Mr Justice R.C. Lahoti, retired chief justice of India.*** Likewise in the 3rd line of the same paragraph the expression "*in the matter*" would read as "***in these matters***".

Except for corrections referred to above, the other directions will remain unaltered.

The captioned application is, accordingly, disposed of.


RAJIV SHAKDHER, J

JULY 26, 2013

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