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

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Judgment delivered on: 16.10.2017

+ ARB. A. (COMM.) 29/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent

+ ARB. A. (COMM.) 30/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent

+ ARB. A. (COMM.) 31/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent

+ ARB. A. (COMM.) 32/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent

+ ARB. A. (COMM.) 33/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent

+ ARB. A. (COMM.) 34/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent

+ ARB. A. (COMM.) 35/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent

+ ARB. A. (COMM.) 36/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent

+ ARB. A. (COMM.) 37/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent

+ ARB. A. (COMM.) 38/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent
+ ARB. A. (COMM.) 39/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent

+ ARB. A. (COMM.) 40/2017

MASYC PROJECTS PRIVATE LIMITED Petitioner

versus

JAIPRAKASH ASSOCIATES LIMITED Respondent

Advocates who appeared in this case:

For the Petitioner(s) : Mr. Tarun Sharma with Ms. Akanksha Kapoor and
Mr. Rahul Gupta, Advs.

Respondent(s) : Mr. K. Datta, Mr. Manish Srivastava and Mr.
Shagun Trisala, Advs.

**CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT
16.10.2017**

SANJEEV SACHDEVA, J. (ORAL)

1. By these appeals under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act), the appellants impugn order dated 18.08.2017 passed by the Arbitrator thereby holding that there is no arbitral dispute which could be

adjudicated upon by the tribunal.

2. The respondents had placed 12 separate purchase orders on the appellant for the Design, Engineering, Manufacture, Supply and Supervision of the Erection & Commissioning pertaining to the Material Handling Belt Conveyors for different projects.

3. As per the appellant, the disputes arose with regard to the payments to be made towards the said purchase orders. Appellant invoked arbitration and Arbitrator was appointed to adjudicate the claims of the appellant with regard to the said purchase orders.

4. Pending the arbitral proceedings, the parties attempted to resolve their disputes and accordingly a meeting took place on 30.03.2015 and a settlement agreement was executed.

5. Pursuant to the said settlement agreement, respondents issued a cheque on 31.03.2015 for Rs. 58,53,356/-. The said cheque was accepted and encashed by the petitioner.

6. As per the respondents in terms of the settlement agreement, the appellant was to withdraw all proceedings pending before the Arbitrator.

7. The respondents took an objection before the Arbitrator that the disputes between the parties had been settled by virtue of the settlement agreement dated 30.03.2015 and there was no dispute left to be arbitrated upon by the Arbitrator.

8. The Arbitrator accepted the contention of the respondent and has held that the terms recorded in the minutes of meeting dated 30.03.2015 amounted to a settlement agreement between the parties and accordingly there was no arbitral disputes, which could be adjudicated upon by the Arbitrator.

9. Learned counsel for appellant contends that the claim of the appellant was much more than what was recorded in the settlement meeting dated 30.03.2015.

10. It is contended that the said terms were agreed to solely on the ground that the entire payment would be made in terms of the settlement agreement.

11. It is further contended that the minutes of meeting dated 30.03.2015 specifically provided that all the cheques were to be issued by the respondents in the sum of Rs. 203.77 by 31.03.2017 though payable till 20.04.2015.

12. It is contended that the settlement terms dated 30.03.2015 recorded that a draft letter would be issued by the appellant, which would be vetted by the respondent, and thereafter parties were to execute a settlement agreement and submit to the Sole Arbitrator..

13. Learned counsel further submits that since the respondents failed to issue the post dated cheques in terms of the settlement agreement and also failed to settle the terms of the settlement and no

settlement agreement was entered into between the parties, the same did not constitute a full and final settlement of all the claims of the petitioner.

14. Learned counsel for the respondent contends that the minutes of the meeting dated 30.03.2015 was full and final settlement of all claims of the appellant and since the appellant has accepted the minutes of meeting and also accepted part payment under the same and the appellant can now be permitted to resile from the same and pursue the arbitration proceedings.

15. Learned counsel further submits that the cheques in terms of the settlement agreement were ready to be handed over but were not handed over because the appellant sought an amendment in the settlement agreement.

16. It is conceded that no settlement agreement was drawn up or signed by the parties.

17. It is contended that no settlement agreement was necessary as the minutes of meeting dated 30.03.2015 constituted a complete settlement and recorded that all the terms and conditions agreed between the parties.

18. By the impugned order dated 18.08.2017, the Arbitrator relying on the decision of the Supreme Court in 'NATHANI STEELS LTD. VS. ASSOCIATED CONSTRUCTIONS', 1995 Supp (3) SCC 324' has held that

once there is a full and final settlement in respect of a particular dispute or difference in relation to a matter covered under the arbitration clause such dispute does not remain to be an arbitral dispute and the arbitration clause cannot be invoked.

19. The Arbitrator has held that once a settlement agreement was reached on 30.03.2015 and was signed by both the parties, what remained to be done was only to issue a letter draft agreement to be vetted by the Respondent's Legal Department.

20. The Arbitrator has held that it is not open to the appellant to contend that the settlement agreement was not final. The view of the Arbitrator is that if the parties had intended the agreement to be only a draft they would have provided final agreement to be executed later.

21. The Arbitrator has held that the agreement between the parties reached on 30.03.2015 was final and unless the same was set aside in appropriate proceedings, no arbitral dispute would arise for being adjudicated upon by the Arbitral Tribunal.

22. The said settlement agreement reached during reconciliation meeting on 30.03.2015 reads as under:-

“Settlement Agreement Reached during the reconciliation meeting on 30.03.15

Masyc has requested for clearance of dues of Rs. 203.77 lacs pertaining to our various projects. They had also taken a legal recourse. Accordingly, they were called for

a meeting on 30th March, 2015 and the following were agreed.

A. Release of Dues:

The details of pending payment against supply and retention are summarized hereunder:

S. No.	Description	Dues (Rs/Lacs)	Release Date
1.	JGCP-Bhuj	58.53	1 st April, 2015
2.	Sidhi	2.70	10 th April, 2015
3.	Super	97.92	20 th April, 2015
		12.15	
4.	Chunar	16.09	18 th April, 2015
		8.37	
5.	Baga	0.42	15 th April, 2015
		0.86	
		6.73	
	Total	203.77	203.77

B. Adjustment of advance paid against Bagheri Order.

For Bagheri CCP - Order of Rs. 360.00 Lacs was given to Masyc with advance payment of Rs. 72.00 Lacs (10% advance & 10% against GAD), which was cancelled later.

Masyc has now accepted that the above advance of Rs. 64,07,974/- be adjusted against order of Belt Conveyors for Deccan Rose. Out of Rs. 72 lacs, Masyc has paid service tax of Rs. 7,92,026/- which cannot be adjusted.

C. Order for Deccan Rose

Masyc has quoted a price of Rs. 1565.24 lacs. This was negotiated to Rs. 1200 lacs.

Masyc has requested for the following payment terms:

- 1. 5% advance against ABG valid till two months of completion of supplies (BG for Rs. 64 lacs shall be submitted --- 30.03.2015.*
- 2. 5% against drawing approval.*
- 3. 5% against unpriced copies of Bought outs.*
- 4. 75% + taxes and duties on pro rata basis by way of LC. LC to be established on approval of drawings PBG of 10% valid till warranty shall be part of the negotiating documents.*
- 5. 10% against LC to be established on drawing approval and shall be drawn on completion of six months from the last supply date.*

Warranty shall be 12 months from commissioning or 18 months from supply completion, whichever is earlier.

Delivery shall be completed within 8 months subject to approval of drawing within two weeks of submission.

In acceptance of the above settlement, Masyc has agreed to withdraw all legal cases. Masyc shall issue a letter based on the draft to be vetted by our legal department. Cheques/PDCs shall be exchanged against the above letter to be issued by Masyc. Settlement Agreement to be signed jointly and submitted to the Sole Arbitrator on the next date of hearing.

*Sd/-
MASYC"*

23. The settlement agreement dated 30.03.2015 specifically stipulates that a letter shall be issued by the appellant based on the draft to be vetted by the Legal Department of the Respondent. The minutes of meeting also records that the settlement agreement is to be signed jointly and submitted to the Arbitrator.

24. No settlement agreement admittedly has been drawn up or executed between the parties. Since no settlement has been drawn up or executed by the parties, the same has also not been submitted to the Arbitrator placing on record the settlement terms.

25. In case any settlement agreement was placed before the Arbitrator, the Arbitrator would have passed an award based on the same thereby giving a right to the parties to execute the same.

26. In the present case post invocation of the arbitration and appointment of the Arbitrator, the parties sought to resolve their disputes by entering into broad terms of the settlement. The settlement terms provided that the respondent shall pay a sum of Rs. 203.77 lacs in full and final settlement of all the claims of the appellant.

27. Part payment of Rs. 58.53 lacs was made by the respondent to the appellant. The minutes also recorded terms for settlement pertaining to two other projects. Admittedly, for the Deccan Rose Project, further steps were not taken by the appellant, though it is contended that a purchase order was placed on the appellant and since

the appellant did not furnish the bank guarantee as agreed to, the same was not concluded.

28. The Supreme Court in NATHANI STEEL LTD. (*Supra*) has held as under:-

“ 3. The appellant has invited our attention to two decisions of this Court. The first dated 01.10.1993 in P.K. Ramaiah and Co. v. Chairman & Managing Director, National Thermal Power Corpn and second dated 04.02.1994 in State of Maharashtra v. Nav Bharat Builders. In the first mentioned case the parties had resolved their disputes and differences by a settlement pursuant where to the payment was agreed and accepted in full and final settlement of the contract. Thereafter, brushing aside that settlement the Arbitration clause was sought to be invoked and this Court held that under the said clause certain matters mentioned therein could be settled through Arbitration but once those were settled amicably by and between the parties and there was full and final payment as per the settlement, there existed no arbitral dispute whatsoever and, therefore, it was not open to invoke the Arbitration clause. In the second mentioned case the respondent-Contractor acknowledged the receipt of the amount paid to him and stated that there was unconditional withdrawal of his claim in the suit in respect of the labour escalation. There was, thus, full and final settlement of the claim and it was contended that no arbitrable dispute survived in relation thereto. Other claims, if any, and which were not settled by and between the parties could be raised and it would be open to consider whether the arbitrable dispute arose under the contract necessitating reference to arbitration. Dealing with this question also this Court after referring to the decision in P.K. Ramaiah case concluded that in relation to the claim under the head ‘labour escalation’

there did not remain any arbitrable dispute which could be referred to arbitration. It would thus be seen that once there is a full and final settlement in respect of any particular dispute or difference in relation to a matter covered under the Arbitration clause in the contract and that dispute or difference is finally settled by and between the parties, such a dispute or difference does not remain to be an arbitrable dispute and the Arbitration clause cannot be invoked even though for certain other matters, the contract may be in subsistence. Learned counsel for the respondent, however, placed great emphasis on an earlier decision of this Court in Damodar Valley Corpn. V. K.K. Kar and in particular to the observations made in paras 11 to 13 of the judgment. It may, at the outset, be pointed out that a similar argument was advanced based on the observations made in this decision, in Ramaiah case also but the same was rejected holding that on the facts since the respondent did not give any receipt accepting the settlement of the claim, the payment made by the other side only unilateral and hence the dispute subsisted and the Arbitration clause in the contract could be invoked. Therefore, parties have arrived at a settlement in respect of any dispute or difference arising under a contract and that dispute or the difference is amicably settled by way of a final settlement by and between the parties, unless that settlement is set aside in proper proceedings, it cannot lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and proceed to invoke the Arbitration Clause. If this is permitted the sanctity of contract, the payment also being a contract, would be wholly lost and it would be open to the party to take the benefit under the settlement and then to question the same on the ground of mistake without having the settlement set aside. In the circumstances, we think that in the instant case since the dispute or difference was finally settled and payments were made as per the settlement, it was not open to the

respondent unilaterally to treat the settlement as non est and proceed to invoke the Arbitration clause. We are, therefore, of the opinion that the High Court was wrong in the view that it took.”

(emphasis supplied)

29. For a dispute to be no longer arbitrable, not only should there be a full and final settlement, but that dispute should also have been finally settled.

30. There are two stages to a settlement. First the parties enter into a settlement and agree on settling the disputes on certain terms and conditions and thereafter the terms and conditions are acted upon resulting in a final settlement of the agreed terms. It is only when the parties have performed their respective obligations as agreed to, that a final settlement of disputes occurs resulting in the extinguishment of arbitrable disputes.

31. In the cases referred to by the Supreme Court in NATHANI STEEL LTD. (*Supra*) the Supreme Court has also noticed the two stages.

32. With regard to the case of P.K. Ramaiah and Co. v. Chairman & Managing Director, National Thermal Power Corpn., the Supreme Court has noticed that the parties had resolved their disputes and differences by a settlement pursuant where to the payment was agreed and accepted in full and final settlement of the contract. The Supreme Court has noticed that not only the disputes were settled amicably by

and between the parties, there was full and final payment as per the settlement.

33. With regards the second case of State of Maharashtra v. Nav Bharat Builders, the Supreme Court has noticed that the Contractor acknowledged the receipt of the amount paid to him and stated that there was unconditional withdrawal of his claim in the suit in respect of the labour escalation. There was, thus, full and final settlement of the claim and it was contended that no arbitrable dispute survived in relation thereto.

34. The Supreme Court in NATHANI STEEL LTD. (*Supra*) has held that once there is a full and final settlement in respect of any particular dispute or difference in relation to a matter covered under the Arbitration clause in the contract and that dispute or difference is finally settled by and between the parties, such a dispute or difference does not remain to be an arbitrable dispute and the Arbitration clause cannot be invoked even though for certain other matters, the contract may be in subsistence.

35. Not only is there a reference to the first stage i.e. a full and final settlement in respect of any particular dispute or difference in relation to a matter covered under the Arbitration clause in the contract but the second stage is also referred to i.e. that dispute or difference is finally settled by and between the parties.

36. Mere agreement between the parties to settle the disputes on particular terms which not would lead to the extinguishment of the arbitrability of disputes but the actual payment in terms of the settlement that would put an end to the arbitrability of the disputes.

37. There may be situations where parties agree on the terms and conditions of settlement, however the terms and conditions are not acted upon. Said situation would not lead to extinguishment of arbitrable disputes. To hold contrarily can lead to grave consequences.

38. For example – If Party ‘A’ has a claim of ‘X’ amount from Party ‘B’, a settlement is arrived between the parties at 80% of ‘X’. Merely because A has agreed to accept 80% of ‘X’ amount would not end the dispute between the parties. It is only the payment of 80% of ‘X’ that the disputes can be said to be finally settled leading to extinguishment of arbitrability of disputes.

39. Taking the above example, if Party ‘B’ after entering into settlement at 80% of ‘X’ pays only 10% of ‘X’ and does not pay the balance. Can it be then said that just because ‘A’ had agreed to accept 80% of ‘X’, ‘A’ cannot raise the claim for payment of even the balance 70%.

40. In the present case also the claim of the appellant, as contended was more than Rs. 203.77 lacs however the settlement was agreed at Rs. 203.77 lacs, as recorded in the minutes of meeting dated

30.03.2015. Admittedly, the entire sum of Rs. 203.77 lacs has not been paid.

41. In such a situation to hold that the appellant has no further remedy in law or nothing further remains to be arbitrated upon would cause grave prejudice to the appellant. That can never be the intention of the law.

42. Learned counsel for the respondent has conceded that appellant is yet to recover the balance amount and the appellant would have to take remedy available in law.

43. In view of the fact, that admittedly disputes and claims of the appellant are surviving even after the minutes of meeting dated 30.03.2015, I am unable to accept the reasoning given by the Arbitral Tribunal that there was no arbitrable dispute left between the parties.

44. It may however be noticed that in the letter dated 31.03.2015, whereby the said cheques of Rs. 58,53,356/- was issued and received by the petitioner, the appellant has specifically made an endorsement that the said amount relates to claims being covered by the Purchase Order No. (i) JGCP/CPP-II/CHP/SUPPLY/01, (ii) JAL/JETTY/MASYC/CHUTE/187/2011, (iii) GACL/SLR/WANAKBORI/2008/151 & (iv) GACL/CPP/CHP/01.

45. The said purchase orders are basis of claims in Arbitration Case No. (i) DAC/904/04-15, (ii) DAC/907/04-15, (iii) DAC/908/04-15

and (iv) DAC/916/04-15 corresponding to Arbitration Appeals No. (i)ARB.A (Comm) No. 38/2017, (ii) ARB.A (Comm) No. 34/2017, (iii) ARB.A (Comm) No. 30/2017 and (iv) ARB.A (Comm) No. 32/2017, respectively.

46. Since the respondents had paid the said amount of Rs.58,53,356/- and the appellant had received the said amount in full and final settlement qua the above referred purchase orders, the finding of the Arbitrator that there is a full and final settlement with regard to the said disputes and that the dispute and difference has been finally settled does not warrant any interference.

47. Since respondents have not paid the balance amount as recorded in the minutes of meeting dated 30.03.2015, the appeals pertaining to Purchase Order Nos. (i) JAL/MASYC/CHUNAR/BC/2010/01, (ii) JAL/JAYPEE SUPER/BC/2009/01, (iii) JAL/SLR/DALLA/2007, (iv) JAL/ MASYC/BAGA/BC/2010/15, (v) JAL/MASYC/525 & 526/ BAGA/2011, (vi) JAL/SIDHI/SLR/2007, (vii) JAL/MASYC/BAGA/BC/2010/01 and (viii) JAL/MASYC/JAYPEE SUPER BC/2010/01 subject matter of Arbitration Case No. (i) DAC/905/04-15, (ii) DAC/906/04-15, (iii) DAC/915/04-15, (iv) DAC/910/04-15, (v) DAC/911/04-15, (vi) DAC/909/04-15, (vii) DAC/917/04-15 and (viii) DAC/918/04-15 corresponding to the Arbitration Appeals being (i) ARB.A (Comm) No. 33/2017, (ii) ARB.A (Comm) No. 37/2017, (iii) ARB.A (Comm) No. 35/2017, (iv) ARB.A (Comm) No. 39/2017, (v) ARB.A (Comm) No. 36/2017,

(vi) ARB.A (Comm) No. 29/2017, (vii) ARB.A (Comm) No. 31/2017 and (viii) ARB.A (Comm) No. 40/2017, respectively are liable to be allowed.

48. In view of the above, Arbitration Appeals being (i) ARB.A (Comm) No. 29/2017, (ii) ARB.A (Comm) No. 31/2017, (iii) ARB.A (Comm) No. 33/2017, (iv) ARB.A (Comm) No. 35/2017, (v) ARB.A (Comm) No. 36/2017, (vi) ARB.A (Comm) No. 37/2017, (vii) ARB.A (Comm) No.39/2017 and (viii) ARB.A (Comm) No. 40/2017, are allowed.

49. The proceedings are remitted to the Arbitrator. The parties shall appear before the Coordinator Delhi International Arbitration Centre for directions on 30.10.2017 at 2.00 PM.

50. Arbitration Appeals being (i) ARB.A (Comm) No. 30/2017, (ii) ARB.A (Comm) No. 32/2017, (iii) ARB.A (Comm) No. 34/2017 and (iv) ARB.A (Comm) No. 38/2017 are dismissed.

51. Parties are left to bear their own costs.

52. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

OCTOBER 16, 2017

JS