

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION**

ARBITRATION PETITION NO.34 OF 2014

M/s. Gurnir Construtions

..Petitioner

Vs.

The Union of India & ors.

..Respondents

Mr. Prlhad Paranjpe a/w Mr. Abhishek Patwari, Advocate for the petitioner.

Mr. H. V. Mehta, Advocate for the respondents.

Coram : Smt. R. P. SondurBaldota, J.

Date : 27th August, 2015.

P.C. :

1. This petition is filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking reference of dispute arising between the parties under Agreement No.CWE/KKE/14 of 2005/06. The respondents oppose the petition on the ground of nonexistence of arbitrable dispute.

2. The petitioner had submitted his tender in a prescribed format and was allotted civil work for special repairs to a building of the respondents. According to the petitioner, the total value of the work done by it was of Rs.40,71,204.64 ps. It is alleged that the respondents have paid only a sum of Rs.15,70,000/- to the petitioner and have treated the same as full and final payment due,

to the petitioner under the contract. The petitioner alleges that the respondents have not taken into account the escalation of costs in completing the work under the contract. The petitioner had sent notice dated 29th October, 2012 to the respondents, invoking the arbitration clause under the agreement and requesting the respondents to appoint the Arbitrator named in the agreement to settle the dispute. The respondents by the letter dated 24th December, 2012 contended that the entire work done by the petitioner under the contract has been measured and the payment therefor made and “No Claim Certificate” signed by the petitioner. Therefore, no dispute could be raised under the agreement for reference to arbitration. If at all any amount according to the petitioner had remained, the same would be deemed to have been waived and extinguished in view of Condition 65 of the General Conditions of Contract.

3. The petitioner does not dispute submission of the final bill and signing of the letter of subrogate. But Mr. Paranjpe, the learned advocate for the petitioner seeks to submit that the petitioner can raise it's claim based on the last sentence of the “No Claims Certificate” which reads as under

“I shall however reserve my right to raise claims to the extent disallowed to me from this FB”

He submits that this clarification will enable the petitioner to

contend that there is arbitrable dispute between the parties arising under the agreement.

4. Mr. Mehta, the learned advocate for the respondents submits that, in fact, on proper interpretation of the last sentence, there would be nothing due and payable to the petitioner. He submits that under similar circumstances the Apex Court in its decision in ***New India Assurance Company Ltd. vs. Genus Power Infrastructure Ltd reported in (2015) 2 Supreme Court Cases page 424***, has observed that once it is seen that the discharge from payment and signing of the letter of subrogate is voluntary, free from any coercion and undue influence, then there is full and final settlement of the claim and as such no arbitrable dispute exists.

5. Admittedly, no amount under the final bill had been disallowed by the respondents. In that case the petitioner can not lay claim under the last sentence. Besides as has been pointed out by Mr. Mehta, the present dispute has been raised by the petitioner after lapse of more than three years.

6. In my opinion, the last sentence of the certificate is specifically clear that the petitioner could have reserved his right to raise a claim disallowed to him under the final bill. Since para 2 of the certificate states that disputed part of the final bill is nil, there

is no question of raising any claim under that bill. There is also delay of more than three years on the part of the petitioner in claiming additional escalation amount. In the circumstances, in my opinion there is no arbitrable dispute between the parties for exercising the power under Section 11 of the Arbitration and Conciliation Act, 1996. The petition is therefore dismissed.

[Smt. R. P. SondurBaldota, J.]