

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ARBITRATION PETITION NO.1179 OF 2015**

M/s. Tex Center Premises Co-operative  
Society Limited

...Petitioner.

V/s.

M/s. Admirecon Infrastructure Pvt. Ltd.

...Respondent.

Mr. N. Shashidharan i/b M/s. S. Ashwinkumar & Co. for the Petitioner.  
Ms. Priyanka Pawar for the Respondents.

**CORAM : R.D. DHANUKA, J.**

**DATED : 24<sup>th</sup> AUGUST, 2015.**

**PC.:**

1. By this Arbitration Petition filed u/s.37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act), the petitioner has impugned the award dated 14/2/2015 passed by the learned Arbitrator directing the petitioner to pay a sum of Rs.18,66,161.69 to the respondent.

2. Learned Counsel appearing for the petitioner states that the petitioner has made a counterclaim against the respondent. The said counter claim is pending. He submits that in the final certificate issued by the consultant, the consultant has taken into consideration the cost of rectification only at Rs.1,00,000/-.

3. Learned counsel for the respondent submits that the certificate is issued by the consultant appointed by the petitioner. She submits that the consultant has already issued clarification on 13/7/2010 that while issuing final certificate, the consultant had considered the deductions effected on account of deficiency in

execution compared to specification in the tender document, deduction effected on account of difference in measurement, deduction effected on account of deficient workmanship and the amount kept in abeyance for rectification works if any during defect liability period other than retention money. It is further submitted by the learned counsel for the respondent that the respondent also has made a claim of Rs.56,28,427.34 against the petitioner herein. It is submitted that since the direction issued by the learned Arbitrator to the petitioner to pay is based on the crystallized liability based on the final certificate issued by the consultant appointed by the petitioner, this Court shall not interfere with the said order passed by the learned Arbitrator.

4. A perusal of the record prima facie indicates that the consultant appointed by the petitioner has already certified the amount of Rs.18,66,161.69 which includes an amount earmarked for carrying out rectification of work, if any. The consultant has issued a clarification dated 13/7/2010 that in the final certificate, the consultant has kept an amount in abeyance other than the retention money. Perusal of the record indicates that 4% of the arrived amount has been retained as retention money which is still in the hands of the petitioner.

5. Insofar as submission of the petitioner that since the said counterclaim filed by the petitioner is pending adjudication no order for payment by the learned Arbitrator could be made is concerned, in my opinion, there is no merit in this submission. Learned Arbitrator has directed the petitioner to pay the said sum which is after deducting the cost of rectification, if any. It is not in dispute that the claim of the

respondent against the petitioner is more than Rs.56,28,000/-. If the petitioner succeeds in the counterclaim filed before the learned Arbitrator, the petitioner would be compensated in respect of said alleged cost of rectification. In my prima facie view the counterclaim, which is based on the compensation, cannot be compared with the certified bill. There is no merit in the present petition and the petition is accordingly dismissed.

6. At the request of learned counsel for the petitioner, the ad-interim relief passed by this Court to continue for a period of two weeks from today.

**(R. D. DHANUKA, J.)**