

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

**ARB.P. 541/2014**

**RATTAN SINGH BUILDERS PVT. LTD.** ..... Petitioner  
Through: Mr. Prabhjit Jauhar with  
Ms. Anupama Kaul, Advocates.

versus

**PUNJ LLOYD LTD.** ..... Respondent  
Through: Mr. J.P. Sengh, Senior Advocate  
with Mr. Divyam Agarwal and  
Ms. Ritika Kohli, Advocates.

**CORAM: JUSTICE S. MURALIDHAR**

**ORDER**  
**03.02.2015**

1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act') seeking the appointment of an Arbitrator to adjudicate the disputes between the parties.
2. The Petitioner and the Respondent entered into an agreement dated 6<sup>th</sup> April 2010 whereby the Respondent appointed Petitioner as contractor to execute the civil and plumbing works for construction of the proposed land system facility at Malanpur, District Bhind (Madhya Pradesh). The value of the work was Rs. 21,62,00,000 (Rupees Twenty One Crores, Sixty Two Lakhs only). The contract was modified by a letter dated 6<sup>th</sup> April 2010 which formed part and parcel of the agreement dated 6<sup>th</sup> April 2010.

3. The Petitioner states that it completed the work order and the contract to the satisfaction of the Architect in terms of the contract and handed over the site to him in November 2011. In September 2011, the final bill had been submitted by the Petitioner. The certificate of payment was issued by the Architect in terms of which the Petitioner was also entitled to Rs. 2,14,94,273 by the Architect.

4. According to the Petitioner, only part payment of Rs. 60 lakhs was disbursed by the Respondent to the Petitioner in the month of January 2012. A legal notice dated 12<sup>th</sup> July 2012 was served upon the Respondent under Section 434 of the Companies Act, 1956 ('CA').

5. On 29<sup>th</sup> January 2014, an order was passed by the Company Court in Company Petition No. 211 of 2013 noting *inter alia* that between the parties there remained some controversy with regard to a sum of Rs. 25,81,500 that had been retained by the Respondent for curing certain alleged defects. The parties were then referred to the Delhi High Court Mediation and Conciliation Centre ('DHCMCC'). The Court in the said order dated 29<sup>th</sup> January 2014 observed that in the event the parties were unable to resolve their disputes through mediation, the Petitioner would be secured by the Respondent by depositing the aforementioned amount and the parties would be at

liberty to initiate such action as may be advised within a specified period of two months thereafter.

6. Apparently the mediation proceedings were not successful. On 6<sup>th</sup> March 2014, the Respondent wrote to the Petitioner stating that as per its record as of 31<sup>st</sup> December 2013 a sum of Rs. 79,67,975 was payable to the Petitioner, subject to reconciliation. In response thereto, on 20<sup>th</sup> March 2014, the Petitioner informed the Respondent that apart from the outstanding balance as on 31<sup>st</sup> December 2013 of Rs. 80,46,702, in the books of the Petitioner, a further sum of Rs. 28,34,452 was to be received from the Respondent. This was followed by a legal notice dated 1<sup>st</sup> July 2014 sent to the Respondent invoking the arbitration clause. It was *inter alia* stated therein as under:

“17. That however at the time of raising 12<sup>th</sup> final bill against certificate No. 12, my clients inadvertently claimed only a sum of Rs. 2,14,94,273 but did not claim the balance amount of Rs. 25,52,429 against previous balance upto 11<sup>th</sup> running account certificate as my client ought to have claimed a sum of Rs. 2,40,46,702 in their final bill. However later on the said lapse on the part of my client was duly admitted by addressee company vide their letter dated 6<sup>th</sup> March 2014 wherein they have admitted that an amount of Rs. 79,67,975 was due and

payable to my client as per their books and wanted my clients to give a confirmation of the said amount due and payable to my clients.”

7. This was followed by another notice dated 14<sup>th</sup> August 2014 again seeking the appointment of the Arbitrator.

8. Mr. J.P. Sengh, learned Senior counsel appearing for the Respondent, referred to a decision of this Court in ***Sushil Kumar Bhardwaj v. Union of India 2009 LawSuit (Del) 768*** and submitted that since the procedure outlined in the contract between the parties was not followed by the Petitioner, the present petition under Section 11 of the Act cannot be entertained. It is submitted by Mr. Sengh that it is only when the parties failed to resolve the disputes in terms of the arbitration clause, could the Court be approached under Section 11 of the Act. It is further submitted that it is not open to the Petitioner to expand its claim beyond what was stated in the notice issued under Section 434 of the CA. Relying upon the order dated 29<sup>th</sup> January 2014, passed in Company Petition No. 211 of 2013 he submitted that the Petitioner could claim only Rs. 25,81,500.

9. Mr. Prabhjit Jauhar, learned counsel appearing for the Petitioner,

on the other hand submitted that with the parties having failed to resolve their disputes through mediation, no purpose would be served in again attempting that process at this stage. In support of the above proposition he relied upon the decision of the designated Judge in ***Datawind Limited v. Indian Institute of Technology Rajasthan*** (decision dated 13<sup>th</sup> December 103 in Arbitration Petition No. 20 of 2013). He also relied upon the decision of the Supreme Court in ***Arasmeta Captive Power Company Private Limited v. Lafarge India Private Limited AIR 2014 SC 525*** and submitted that the question whether the Petitioner can claim anything beyond what was noted in the order dated 29<sup>th</sup> January 2014 passed by the Company Court can be examined by the learned Arbitrator. He pointed out that by a subsequent order dated 2<sup>nd</sup> May 2014 in Company Petition No. 211 of 2013, it was noted that the Respondent had deposited a sum of Rs. 25,81,500 in this Court and that amount was directed to be kept in an interest bearing fixed deposit.

10. The above submissions have been considered. As regards the objection of the Respondent with regard to non-compliance of the procedure outlined in the arbitration clause between the parties, the Court notes that pursuant to the order passed by the Company Court on 29<sup>th</sup> January 2014, the parties did go before the DHCMCC.

Therefore, the requirement of the arbitration clause of the parties having to attempt to resolve the disputes through mediation was satisfied. That mediation was not successful is another matter altogether.

11. This was followed by the deposit made by the Respondent of the amount noted in the order dated 29<sup>th</sup> January 2014. While recording that fact in the subsequent order dated 2<sup>nd</sup> May 2014 in Company Petition No. 211 of 2013, the Court directed the parties to initiate action within two months. Pursuant thereto on 1<sup>st</sup> July 2014, a legal notice was issued by the Petitioner invoking the arbitration clause. Therefore, that order was also complied with. In light of the law explained by the Supreme Court in ***Datawind Limited*** (supra) the Court finds that there is no bar to the appointment of an Arbitrator, once it is clear that efforts were made, although unsuccessfully, to amicably resolve the disputes in terms of the arbitration clause.

12. As regards the issue whether the Petitioner can be permitted to claim an amount beyond what is stated in the initial notice under Section 434 of the CA, the Court is of the view that this is an issue that can be examined by the learned Arbitrator. This Court is not called upon to examine that issue in light of the legal position

explained by the Supreme Court in *Arasmeta Captive Power Company Private Limited* (supra).

13. Accordingly, the Court appoints Mr. Rakesh Kapoor, District & Sessions Judge (retired), residing at 5-C, Court Road, Civil Lines, Delhi-110054 (Telephone No. 23993200) as sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC'). The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules.

14. The petition is disposed of. A copy of this order be communicated to the learned Arbitrator as well as Additional Coordinator, DAC forthwith.

**S. MURALIDHAR, J.**

**FEBRUARY 03, 2015**

*Rk*