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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 74/2016

SREEDEVI INFRACONSTRUCTIONS PVT LTD Petitioner
Through: Mr. Sridhar Potaraju, Mr. Arjun Singh
Mr. Gaichangpou Gangmei, Ms. Sindoor VNL
Ms. Ankita Sharma, Ms. Devika Singh, Advocates.

versus

MANAGING DIRECTOR, ARMY WELFARE HOUSING
ORGANISATION Respondent
Through: Mr. A.K. Tewari, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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06.10.2016

IA No. 7449 of 2016

1. This application filed by the Applicant/Respondent seeks setting aside of the order dated 1st April, 2016 passed by the Court referring the dispute between the parties to the Delhi International Arbitration Centre ('DAC') for appointment of an Arbitrator in accordance with the provisions of the Act.
2. It is not disputed by the Respondent that the notice of the main petition was in fact duly served to the Respondent and that despite service of notice, they did not appear in the Court when the matter was taken up on 1st April, 2016.

3. However, the main point urged in this application is that the dispute that has been sought to be referred to arbitration by the Petitioner is that arising out of an alleged contract awarded by the Respondent to the Petitioner for the development/construction of a Club House, which according to the Respondent ,was never awarded to the Petitioner.

4. In order to make good the above submission, learned counsel for the Respondent has drawn the attention of the Court to the letter dated 3rd July, 2015 addressed by the Petitioner to the Respondent seeking reference of its claims to arbitration pertaining to construction of the Club House. Counsel for the Respondent further refers to the reply to the said notice wherein a categorical stand was taken by the Respondent that the work of construction of the Club House was never awarded as a separate contract to the Petitioner.

5. Learned counsel for the Petitioner, on the other hand, refers to the correspondence between the parties, copies of which have been placed along with reply to the present application. In particular, reference is made to the letters dated 27th January 2012, 2nd April 2012, 10th April 2012, 12th April 2012 and 12th July 2012, where, repeatedly, a query was raised on behalf of the Managing Director of the Respondent regarding the progress of the Club House building with copies to the Petitioner 'for immediate action'. Reference, in particular, is made to the letter dated 12th April, 2012 written by the Project Director of the Respondent, to the Director (Contracts) with the subject matter 'Construction of Club House CA No. AWHO/Bangalore/05/2009 with M/s Sreedevi Constructions'. It was stated

in para 2 that “the site has been handed over to M/s Sreedevi Constructions on 10-04-2012”. It is, accordingly, submitted that the Petitioner was entrusted with the work of construction of the Club House in addition to the main contract of construction of 167 Villas.

6. Learned counsel for the Petitioner also draws attention of the Court to the fact that the final bill for the construction of the 167 villas for a sum of Rs. 9,80,47,427 rounded off to Rs. 9,95,06,000 was in fact forwarded to the Respondent under cover of letter dated 26th March 2015. While it is not in dispute that the claims formulated in the letter dated 3rd July, 2015 pertained essentially to the Club House construction, the said letter did make a reference to the pre-final bill of the contract which was for the construction of 167 villas.

7. The above submissions of learned counsel for the parties have been considered. *Prima facie* it does appear that the letter dated 3rd July, 2015 addressed by the Petitioner to the Respondent raised claims only pertaining to the Club House. However, the fact that the Petitioner had by then already raised the final bill for the construction of 167 Villas is evident from the documents placed on record. It does appear that the claim of the Petitioner which it seeks to be referred to arbitration includes the claim pertaining to the main contract of construction of 167 villas as well the claim pertaining as to the construction of Club House. This explains why in para 39 of the main petition, the Petitioner has stated as under:

“That the Petitioners claim as per the final bill dated 25th July 2015 is amounting to Rs. 9,95,06,000.00 and Rs. 1,15,05,000.00 towards supplementary work for which separate claim is made in the letter dated 03.07.2015 seeking invocation of arbitration clause.”

8. As regards the contention of the Respondent, the contract of the Club House was, in fact, never awarded to the Petitioner, the correspondence placed on record by the Petitioner in reply to the application seems to indicate to the contrary. However, this is only a *prima facie* view and whether in fact the said work was awarded to the Petitioner will be a question of fact which would be examined by the learned Arbitrator.

9. The Court is, therefore, not persuaded to come to any definite conclusion at this stage that the work of constructing the Club House was never awarded to the Petitioner or that the claim of the Petitioner is confined only to the construction of the Club House. If according to the Respondent any part of the claim made by the Petitioner before the Arbitrator is not tenable, it would be for the learned Arbitrator to examine that issue in accordance with law. The Court makes it clear that it is not expressing any view on the contentions of either party with regard to the claim of the Petitioner.

10. The Court is not persuaded to recall its order dated 1st April, 2016, referring the dispute for arbitration to the DAC. The application is accordingly dismissed.

S. MURALIDHAR, J

OCTOBER 06, 2016

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