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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 310/2016

**MCCOY ARCHITECTURAL SYSTEMS (P) LTD
& ANR.**

..... Petitioners

Through: Mr. Mukesh Kumar with Ms. Gunjan
Sinha Jain, Advocates.

versus

SKYLINE STRUCTURES (INDIA) PVT LTD Respondent
Through: Mr. Kumar Vikram, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

07.12.2016

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1. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 ('Act') filed by the Petitioners seeking the appointment of an Arbitrator for adjudication of disputes between the parties.

2. It is not in dispute that the original work order was placed by the Respondent on Petitioner No. 1 and not Petitioner No. 2. The said work order contains an arbitration clause.

3. A preliminary objection is raised by the Respondent to the maintainability of the present petition at the behest of Petitioner No. 2 on whose behalf a demand notice was sent on 29th September, 2015.

4. Learned counsel for the Petitioner sought to contend that the correspondence exchanged between the parties and their conduct subsequent to the placing of the work order to show that both Petitioner Nos. 1 and 2 were involved in the execution of the contract and payments were made by the Respondents to both Petitioner Nos. 1 and 2. The definition of the expression 'contractor' in the work order as including affiliates is also referred to. However Section 2 (1) (h) of the Act defines 'party' to mean a mean party to the agreement.

5. Turning to Section 7 of the Act, the fact remains that the correspondence does not specifically talk of the arbitration agreement between Petitioner No.1 and the Respondent extending to Petitioner No.2. In particular, there is nothing to indicate that the parties intended that the arbitration clause in the work order placed on Petitioner No. 1 would apply to the work executed by Petitioner No. 2 as well. Therefore, the question of taking recourse to Section 7 of the Act to infer an arbitration agreement between Petitioner No. 2 and the Respondent does not arise.

6. Admittedly, the demand notice was sent not on behalf of Petitioner No. 1 but Petitioner No. 2. There is, therefore, an additional difficulty in the prayer in the present petition being granted.

7. The Court is, therefore, unable to grant any of the reliefs sought in this present petition. This however, will not preclude Petitioner No. 2 from seeking other appropriate remedies that may be available to it in accordance

with law. As far as Petitioner No.1 is concerned, if any amount is owing to it, then a proper notice of demand can be issued afresh by it to the Respondent invoking the arbitration clause before taking other steps in accordance with law.

8. The petition is disposed of in the above terms.

S.MURALIDHAR, J

DECEMBER 07, 2016

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