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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 673/2016

KATYANI CORPORATION

..... Petitioner

Through:Mr. Vivekanand, Advocate.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Jagjit Singh, Senior Standing
counsel, Mr. Preet Singh, Mr. Sukhdev Singh
Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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19.12.2016

1. This petition under Section 11(6) of the Arbitration and Conciliation Act 1996 ('Act') seeks reference of the disputes between the parties arising out of the award of the work of "replacement of roof sheeting valley gutter and rail water pipes in High Bay shed and vacuum dewatered flooring and different bays of Diesel Shed at TKD" by the Respondent to the Petitioner to arbitration.

2. According to the Petitioner, the work was completed on 15th June, 2015 and the defect liability period also expired on 14th December, 2015. There were some final bills totalling Rs. 38 lakhs lying with Respondent No. 1. According to the Petitioner, since it was in urgent need of the funds, it wrote letters dated 11th and 17th December, 2015 agreeing to not press the claims regarding extra items of work which had been approved by the Respondents

which are otherwise payable. Again, it is stated that when the final bill was sent for processing, the Petitioner under duress and “undue influence” signed a supplementary agreement and it was only thereafter that the payment under the final bill was released. It is stated that on 1st February, 2016, the Petitioner wrote to the Respondent pointing out that without the signature on the supplementary agreement the payment would not be released to it. A request was made to revise the final bill to make payment of balance items. On 21st April, 2016, the Petitioner made a request for releasing the amounts which were not included or deleted/reduced in the final bill. This was reiterated on 3rd June, 2016 and a request was made to refer the disputes to arbitration.

3 On 21st September, 2016, the Respondent wrote to the Petitioner drawing its attention to the supplementary agreement stating that in view of the clause in the supplementary agreement whereby the parties had agreed that “the arbitration clause contained in the said principal agreement shall cease to have any effect and/or shall be deemed to be non-existent for all purposes”, the dispute could not be referred to arbitration.

4. Having heard learned counsel for the parties, the Court is of the view that it is not possible for the Court, on the basis of the existing pleadings, to come to any definite conclusion whether the Petitioner signed the supplementary agreement under duress or undue influence as claimed by it. The Court is of the view that this issue also should be examined by the learned Arbitrator as a preliminary issue.

5. The Court, accordingly, proposes that Mr. Sudhanshu Bata, learned Senior Advocate (Mobile No. 9811035392) be the 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.

6. In the first instance, the proposed Arbitrator will make a disclosure to the DAC in terms of Section 11 (8) read with Section 12 (1) of the Act and, thereafter, enter upon reference. DAC will provide to the parties copies of the said disclosure. In the event the disclosure is not made within a reasonable time or such disclosure discloses the inability of the proposed Arbitrator to act as such, it will be open to the parties to apply to this Court for directions.

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

S.MURALIDHAR, J

DECEMBER 19, 2016
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