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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ARB.P. 504/2015
S.P. SINGLA CONSTRUCTIONS PVT. LTD. Petitioner
Through: Mr. Anirudh Wadhwa, Advocate

versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Jagjit Singh, Advocate

CORAM:HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **11.01.2016**

It is not in dispute that the quantum of the claim is over Rs.18,00,00,000/-.

The arbitration clause, i.e., Clause 64(3)(a)(ii) of the General Conditions of Contract, 1999 was first invoked on 14th May, 2014 and again on 13th February, 2015, but the respondents chose to remain silent about it.

Mr. Jagjit Singh, the learned counsel for the respondents, would submit that in view of the Supplementary Agreement dated 29th March, 2014, the arbitration clause ceased to exist since the parties had already discharged their obligations under the original agreement; thus, no arbitrable dispute exists.

An identical Supplementary Agreement, apropos the subsistence of the arbitration agreement, was considered by the Supreme Court in *Union of India v. Hari Singh*, (2010) 15 SCC 201, wherein it was held that “when the parties by a supplementary agreement obtained a full and final discharge after paying the entire amount, which was due and payable to the contractor, thereafter the contractor would not be justified in invoking arbitration

because there was no arbitral dispute for reference to the arbitration.” Mr. Jagjit Singh submits that in view of the above, this petition would not be maintainable.

The Court would note that the Supplementary Agreement (Annexure A-1 page 6 of the reply of the respondent) appears to have been signed on behalf of S.P. Singla Contractors Pvt. Ltd., but there is no whisper of it in the petition.

The learned counsel for the petitioner submits that the said Supplementary Agreement has not been duly executed by the petitioner and whether or not there was a concluded Supplementary Agreement would be determined only through arbitration. On a query by the Court whether monies have been received subsequent to the alleged execution of the aforesaid Supplementary Agreement, the learned counsel for the petitioner replies that the monies were released simultaneous with the Supplementary Agreement which records that the full and final settlement has been made and the requisite monies have been released.

To the extent that the execution of the Agreement itself is disputed, the issue would have to be determined in the arbitral proceedings, in terms of the arbitration clause. However, since the respondents have not appointed an Arbitrator within 30 days of invocation of the arbitration clause in terms of the dicta of the Supreme Court in *Deep Trading Co. Vs. Indian Oil Compn.(2013) 4 SCC 53*, they have lost any rights they may have had to do so.

Accordingly, Justice (Retd.) Vikramajit Sen (Mobile No.8447333366), a former Judge of the Supreme Court of India, is appointed as the Arbitrator, before whom the parties shall appear

on 28.1.2016. The fees for the arbitration shall be fixed by the learned Arbitrator himself.

A copy of this order be sent to the learned Arbitrator.

The petition stands disposed off in the above terms.

NAJMI WAZIRI, J

JANUARY 11, 2016

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