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

+ **ARB.P. 110/2016**

KLA CONSTRUCTION TECHNOLOGIES PVT.
LTD.

..... Petitioner

Through Mr Kartickey Mathur, Mr S. Gupta and
Mr K.K. Shukla, Advocates.

versus

M/S RAO MOHAR SINGH EDUCATIONAL
SOCIETY.

..... Respondent

Through Mr Vijay Nair and Mr vineet Sinha,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% 21.12.2016

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to an agreement dated 16.12.2012 for construction of a school.
2. The copy of the said agreement produced by the petitioner includes an arbitration clause. However, the same is disputed by the respondent. The respondent has filed an affidavit *inter alia* stating that no agreement as alleged was executed between the petitioner and the respondent and therefore, an arbitration agreement does not exist between the parties. It was further contended that the copy of the agreement produced by the petitioner

was forged and fabricated.

3. The only controversy to be considered is whether an arbitration agreement exists between the parties.

4. In order to address the aforesaid controversy the petitioner was called upon to file the original agreement dated 16.12.2012 relied upon by the petitioner. However, the petitioner asserted that it had only a photocopy of the said agreement and the original of the same was in possession of the respondent. The respondent, on the other hand, affirmed that no such agreement was executed between the parties.

5. By an order dated 30.08.2016, the respondent was directed to produce all relevant documents in its power and possession relating to the construction work including the invitation to tender or enquiries floated by the respondent.

6. On 21.09.2016, the learned counsel for the respondent submitted that no documents relating to the works in question were available with the respondent as all the documents were destroyed. In view of the aforesaid statement, the President of the respondent no.1 society, was directed to file an affidavit affirming that all relevant documents had been destroyed.

7. In compliance with the aforesaid directions, Mr Pradeep Yadav, President of the respondent society filed an affidavit affirming that a tender was floated by respondent society in August 2012 for construction of the school campus for OPY World School at Village Baraph, Tehsil Kanina, Rewari, Haryana. He further affirmed that the tender documents did not

include an arbitration clause. The petitioner had bid for the civil construction works and had submitted a letter of acceptance dated 03.09.2012 along with signed and stamped tender documents (which contained the terms and conditions of the agreement between the parties). He further affirmed that although the original documents submitted by the petitioner were destroyed, however, a soft copy of the signed tender documents and letter of acceptance dated 03.09.2012 submitted by the petitioner had been retrieved from the computer.

8. Mr Yadav also produced the scanned copy of the letter of acceptance submitted by the petitioner as well as the copy of the tender documents retrieved from the respondent's computer. The said documents indicated that the original of those documents bore the stamp of the petitioner and the initials of its authorised signatory Mr Anurag Bindal on every page. Mr Yadav further affirmed that the scanned copy of the documents was a true copy of the original.

9. In view of the above, by an order dated 30.11.2016, the petitioner was called upon to categorically affirm whether the stamp appearing in the scanned copy of the documents annexed with the affidavit filed by Mr Yadav was the stamp of the petitioner and whether the initials put therein were the initials of Mr Anurag Bindal.

10. In compliance with the aforesaid order dated 30.11.2016, the petitioner filed an affidavit affirming that the stamp and the initials on the scanned tender documents filed along with affidavit dated 18.10.2016 of Mr Yadav bears the stamp and initials of the deponent (Mr Anurag Bindal).

However, the petitioner claimed that the said documents had been manipulated.

11. The scanned copy of the tender documents and the letter of acceptance does not include an arbitration clause. Further, the petitioner has been unable to produce the original of the agreement or the original tender documents alleged to have been signed by the respondent.

12. The tender documents produced by the petitioner does not bear the signatures of the respondent or its architect. On the other hand, the scanned copy of the tender documents produced by the respondents bears the stamp of the petitioner as well as the initials of its authorised representative.

13. In view of the above, I am unable to accept the petitioner's claim that an arbitration agreement exists between the petitioner and the respondent. The petition is, accordingly, dismissed.

DECEMBER 21, 2016
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VIBHU BAKHRU, J