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

% **Date of Decision: 25.07.2017**

+ ARB.P. 260/2017

GUPTA BROS INTERIORS AND
INFRATECH PVT. LTD. Petitioner
Through Mr.S.K.Maniktala, Adv.

versus

GUDDU INVESTMETNS (DELHI) PVT. LTD. Respondent
Through Mr.Sanjiv K.Jha, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(Oral)

IA No.4600/2017

Exemption allowed, subject to all just exceptions.

ARB.P. 260/2017

1. This petition is filed under section 11(6)(a) of the Arbitration and Conciliation Act, 1996 seeking to appoint a nominee arbitrator on behalf of the respondent. The brief facts as stated in the petition are that the petitioner is engaged in the business of Civil Constructions and Interiors & Designing. The petitioner was awarded the work of Construction of Support Staff Housing at Dadri, Gautam Budh Nagar, Uttar Pradesh. Agreement dated 26.8.2014 was executed between the parties. Thereafter a Settlement Agreement dated 13.10.2016 was executed between the parties.
2. The respondent has entered appearance and has filed his reply. In the

reply it has been pointed out that pursuant to certain disputes between the parties, a Settlement Agreement was executed on 13.10.2016 which has been fully performed by both the parties. The Contract stands discharged by performance and no dispute survives between the parties. Hence, it is urged that the present petition be dismissed.

3. I have heard learned counsel for the parties. Learned counsel appearing for the petitioner has vehemently argued that the Settlement Agreement between the parties dated 13.10.2016 has not been fully complied with by the respondent. He further relies upon an alleged draft invoice dated 14.10.2016 which he submits was transmitted to the petitioner by the respondent after the Settlement Agreement. He submits that as per the said draft invoice a sum of Rs.8,34,92,099 crores was due and payable to the petitioner. He submits that in terms of the Agreement this amount has not been paid and hence there is a dispute. He further seeks recovery of Rs.34,24,606/- as retention money said to have been withheld by the respondent. He further states that a further sum of Rs.46,31,300/- was withheld on account of deductions made as the petitioner did not furnish performance bank guarantee. He further submits that these two amounts form part of the 8.34 crores which are reflected in the draft invoice remitted by the respondent. Hence, he submits that dispute still persists between the parties and the matter is liable to be referred to arbitration.

4. Learned counsel for the respondent has stated that pursuant to Settlement Agreement dated 13.10.2016 no disputes survive between the parties. He further point out that there is no arbitration agreement between the parties in the original agreement. The arbitration agreement is contained in the Settlement Agreement dated 13.10.2016. He submits that in case there

are any differences as wrongly claimed by the petitioner they cannot be subject matter of the arbitration petition as these alleged claims are not arising out of or relating to the Settlement Agreement. These alleged claims pertain to and arise out of the original agreement between the parties.

5. Some of the relevant terms of the Settlement Agreement dated 13.10.2016 read as follows:-

“2. The Company has already paid a sum of Rs. 6,28,42,394/- (Six Crores Twenty Eight Lacs Forty Two Thousand Three Hundred & Ninety Four) to the Contractor under the scope of Contract. The receipt of which is hereby acknowledged by the Contractor.

3. Company will pay Rs. 125,93,800/- (One Crore Twenty Five Lacs Ninety Three Thousand & Eight Hundred) to Contractor (including all taxes & Duties, VAT/WCT, Service Tax, Labour Cess & other applicable taxes) as full & final amount on submission of all documents. The Company will make the necessary deductions as per the prevailing laws and give the certificates to the Contractor.

4. This is in accordance to the reconciliation forming part of this Settlement Agreement signed between both the parties and as to this Agreement.

5. This Agreement is in full and final settlement of any causes of action whatsoever which the Parties have against each other and of all the dues in respect of Construction of Housing for Support Staff at Dadri Gautam Buddh Nagar,(U.P) rendered by Contractor to Company as described in the proposal and Contract Agreement Dated 26th August,2014.

6. In consideration of Company making full and final payments against all the invoices till date of signing of

this Agreement within the terms of above said Contract Agreements, Contractor hereby confirms that **it does** not have any further claim or demand and releases/discharges the Company and its Directors, its employees and consultants from any and all claims and demands with respect to work and services rendered by Contractor.

7. This agreement supersedes all previous agreements between the Parties.”

6. It is clear from the above that in terms of the aforesaid settlement dated 13.10.2016 the respondent was to pay a sum of Rs.1,25,93,800/- in full and final settlement of all dues to the petitioner. Clause 4 of the agreement notes that this figure has been arrived at in accordance to the reconciliation which forms part of the Settlement Agreement. Clause 5 further notes that the Agreement is in full and final settlement of any cause of action whatsoever which the parties have against each other in respect of Construction of Housing for Support Staff. Clause 7 further notes that this agreement supersedes all previous agreements between the parties.

7. The admitted position is that the petitioner has received a said sum of Rs.1,25,93,800/- less deductions as per prevailing law. These deductions are on account of WCT, TDS and Labour Cess. This is clear from the averments in para 1, 2 and 3 of the reply filed by the respondent to which there is no specific denial in the Rejoinder.

8. It is manifest that on execution of the Settlement Agreement and implementation of the Agreement, no disputes survive between the parties. Reliance by the petitioner on the alleged final bill said to have been communicated to the petitioner has no meaning in view of the Settlement Agreement between the parties. The said final bill does not seek in any

manner to amend, modify or alter the terms of the Settlement Agreement. There is no such clause in the bill. It is an unsigned document. This document does not alter the Settlement Agreement. As no dispute survives between the parties there can be no appointment of an Arbitrator.

9. The Supreme Court in the case of *Nathani Steels Ltd. vs. Associated Constructions, 1995 Supp (3) SCC 324* held as follows:-

“3. Even otherwise we feel that once the parties have arrived at a settlement in respect of any dispute or difference arising under a contract and that dispute or the difference is amicably settled by way of a final settlement by and between the parties, unless that settlement is set aside in proper proceedings, it cannot lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and proceed to invoke the Arbitration clause. If this is permitted the sanctity of contract, the settlement also being a contract, would be wholly lost and it would be open to one party to take the benefit under the settlement and then to question the same on the ground of mistake without having the settlement set aside. In the circumstances, we think that in the instant case since the dispute or difference was finally settled and payments were made as per the settlement, it was not open to the respondent unilaterally to treat the settlement as non est and proceed to invoke the Arbitration Clause. We are, therefore, of the opinion that the High Court was wrong in the view that it took.”

10. The aforesaid legal position has also been upheld by the Supreme Court in the case of *Union of India & Ors. Vs. Hari Singh, (2010) 15 SCC 201*.

11. In view of the above judgments, once the parties have arrived at a settlement in respect of their disputes, it does not lie for one of the parties to spurn the settlement as is sought to be done in the present case. No disputes now survive between the parties.

It is also noteworthy in the present case that the arbitration clause is contained in the Settlement Agreement dated 30.10.2016. The claims which are sought to be raised by the petitioner pertain to the original contract which does not have an arbitration clause.

12. Accordingly, there is no merit in the petition and same is dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J.

JULY 25, 2017/n