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

+ **ARB.P. 553/2016**

AGARWAL WATER SUPPLIERS Petitioner

Through Mr S.W. Haider, Advocate.

versus

UNION OF INDIA Respondent

Through Mr Jagjit Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **04.01.2017**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, for appointment of an arbitrator to adjudicate the claims of the petitioner amounting to ₹ 84,65,000/-.
2. It is stated that the work pertaining to TKD-Augmentation of holding capacity of ELS/TKD from 120 to 175 locos (including 60 WAG-9) and provision of custody store and training centre and modification of JE/TRD Office was awarded to the petitioner vide Acceptance Letter No. W 623/15/88/2009 dated 03.11.2009 for ₹2,23,86,943.39 (Rupees Two Crores Twenty Three Lacs Eighty Six Thousand Nine Hundred Forty Three and Thirty Nine Paise Only).
3. It is stated that certain disputes have arisen between the parties in relation to the aforesaid contract.
4. The stipulated date of completion of work was 8 months from the

aforesaid date of acceptance letter, that is, the work awarded was to be completed by 02.07.2010. However the work was completed on 30.04.2014. The petitioner states that the final bill was not prepared / paid by the respondent despite follow up by the petitioner. Finally, the respondent agreed to release the admitted amounts and the security deposited but on a pre-condition that the petitioner signs a no claim certificate as well as supplementary agreement, in advance, accepting the payment as full and final payment of its dues. The petitioner states that it was under “immense coercion/pressure” and had to sign the no claim certificate as well as the supplementary agreement for obtaining the release of the admitted amounts as well as security deposit. The petitioner states that the final bill was prepared thereafter, however, it did not include any of the claims which has been raised by the petitioner.

5. In view of the aforesaid dispute, the petitioner issued a notice dated 05.09.2015 invoking the arbitration clause. However, the petitioner did not receive any response to the said notice.

6. The respondent has filed a reply to the present petition opposing the appointment of an arbitrator principally on three grounds. First, it is contended that this Court does not have the territorial jurisdiction to entertain the present petition as the agreement in question was executed at Kota, Rajasthan; the Head Office of Western Central Railway, Kota is at Jabalpur, Madhya Pradesh; and the arbitration notice dated 05.09.2015 was also sent to the General Manager West Central Railway Kota at Jabalpur, Madhya Pradesh.

7. Second, it is stated that the value of the claims made by the petitioner exceed 20% of the contract value of ₹2,31,94,286/- and as per clause 33.2 of

the Special Conditions and Specifications of Contract, the provisions of the arbitration clause would be applicable only for settlement of claims or disputes between the parties for value less than or equal to 20% of the value of the contract.

8. Third, the petitioner has issued a no claim certificate and a supplementary agreement and consequently, the arbitration agreement stands discharged.

9. Insofar as the objection regarding this Court not having the territorial jurisdiction is concerned, the learned counsel for the petitioner has pointed out that the works under the contract were executed at Tughlakabad which was within the National Capital Territory of Delhi and therefore substantial part of the cause of action had arisen within the territorial limits of this Court. The said fact is not disputed by the respondent. Consequently, the objection that this Court does not have the territorial jurisdiction is unmerited. Undisputedly, the part of the cause of action has arisen within the territorial jurisdiction of this Court and therefore in terms of Section 2 (e) of the Act, this Court would have the jurisdiction in the present case to decide the questions forming the subject matter of arbitration. Therefore, the present petition cannot be rejected on the ground of lack of jurisdiction.

10. The second submission is that the arbitration clause is not applicable as the same is applicably only for settlement of claims between the parties for a value of less than or equal to 20% of the value of contract. The respondent has relied on clause 33.2 of the Special Conditions and Specifications of Contract in support of this submission. The said clause reads as under:-

“33.2 The provision of the Clause 63 and 64 of General

Conditions of Contract will be applicable only for settlement of claims or disputes between the parties for value less than or equal to 20% of the value of the contract and when claims disputes are of the value more than 20% of the value of contract provision Clauses 63 & 64 and other value and clause of the general conditions of contract will not be applicable and arbitration will not be remedy for settlement of such disputes.”

11. In view of the above, the submission that the disputes sought to be raised fall outside the scope of the arbitration clause may be merited. However, the scope of the present petition is confined to examining the existence of an arbitration clause, which is not disputed. The question whether the disputes raised by the petitioner fall within the scope of the arbitration clause would be a matter to be decided by the arbitrator. Therefore, even though this Court finds that there may be substance in the contention advanced by the respondent that the claims made by the petitioner, fall outside the arbitration clause, the said question would have to be considered by the arbitrator.

12. The contention that the arbitration agreement stands discharged by the no claim certificate and the supplementary agreement, is a contentious issue. The petitioner had made specific averments in the petition stating that the said agreement and certificate were signed under duress and coercion. The petitioner has made a specific averment that the respondent had refused to release even the admitted amounts and the security deposit unless such certificate and agreement were signed. It is relevant to note that the said contention has not been traversed by the respondent.

13. The learned counsel appearing for the respondent submits that it was necessary to get the said documents signed in view of the tender conditions.

Be that as it may, the question whether the no claim certificate and supplementary agreement are valid and whether the condition requiring the submission of a no claim certificate is valid would have to be considered by the arbitrator.

14. Accordingly, it is directed that an Arbitrator be appointed under the Rules of the Delhi International Arbitration Centre (DIAC). The representatives of the parties shall appear before the Co-ordinator, DIAC on 02.02.2017 at 11:00 AM. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules.

15. It is clarified that nothing stated herein shall preclude the parties from raising such claims and contentions as they may be advised and the Arbitrator shall decide the same uninfluenced by any observations made in this order.

16. The petition is disposed of.

VIBHU BAKHRU, J

JANUARY 04, 2017

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