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

+ **ARB.P. 11/2018**

**A K BUILDERS THROUGH PROP. SHRI ARUN
KUMAR TANDON**

..... Petitioner

Through: Mr Sanjay Bansal, Advocate.

versus

INDIAN INSTITUTE OF PACKAGING & ANR. Respondents

Through: Mr Madhumeet Kappor and Mr
Nikhil Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **20.03.2018**

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to an agreement dated 07.06.2011.
2. There is no dispute that the said agreement contains an arbitration clause, which is set out below:-

“37. SETTLEMENT OF DISPUTE ARBITRATION

All disputes and differences of any kind whatever arising out of or in connection with the contract or the carrying out of the works (whether during the progress of the works or after their completion, and whether before or after the determination, abandonment or breach of the Contract) shall be referred to and settled by the Architects who shall state their decision in writing. Such decision may be in the form of a final certificate

or otherwise. The decision of the Architect with respect to any of the excepted matters shall be final and without appeal as stated in Clause No. 35. But if either the Employer or the contractor be dissatisfied with the decision of the Architects or any matter, question or the dispute of any kind (except any of the except matters) or as to the with-holding by the Architects of any certificate to which the Contractor' may claim to be entitled, then and in any such case either party (the Employer or the Contractor) may within twenty eight days after receiving notice of such decision give a written notice to the other party through the Architects requiring that such matters in dispute be arbitrated upon. Such written notice shall specify the matters which such written notice has been given and no other shall be and is hereby referred, to the Arbitration and final decision of a single Arbitrator being a Fellow of the Indian Institute of Architects to the agreed upon and appointment of a single arbitrator, to disagreement as of two Arbitrators both being Fellow of the Indian Institute of Architects, one to be appointed by each party which Arbitrators shall before taking upon themselves the burden of Reference appoint an Umpire.

The Arbitrator the Arbitrators or the Umpire shall have power to open up, review and revise any certificate, opinion, decision, requisition, or notice, save in regard to the excepted matters referred to in Clause no. 35 and to determine all matters in dispute which shall be submitted to him or them and of which notice shall have been as aforesaid.

Upon every or any such reference the cost of and incidental to the Reference an Award respectively shall be in the discretion of the Arbitrator or 'Arbitrators or the Umpire who may determine the amount thereof, or direct the same to be taxed as between Attorney and client or as between party and party and shall direct by whom and in what manner the same shall be borne and paid. The submission shall be deemed to be a submission to Arbitration within the meaning of the Indian Arbitration Act 1940 or any statutory modification thereof. The award of the Arbitrator. or Arbitrators or the Umpire shall be

final and binding on parties. Such reference except as to the withholding by the Architects of any Certificate under Clause no. 32. to which the Contractor Claims to be entitled shall not be opened or entered upon until after the completion or alleged completion of the works arising from any cause unless with the written consent of the Employer shall not withhold the payment of the Interim Certificates nor the Contractor except with the consent in writing of the Architects in any way delay the carrying out of the works by reason of any way delay the carrying out of the works by reason of any such matter, question or dispute being referred to Arbitration but shall proceed with the work with all due diligence and shall until the decision of the Arbitrator or Arbitrators or the Umpire be given abide by the decision of the Architects and no Award of the Arbitrator of his obligations to adhere strictly to the Architects' Instructions with regard to the actual carrying out of the works. The employer and the Contractor hereby also agree that Arbitration under this clause shall be a condition precedent to any right of Action under the Contract.”

3. However, the learned counsel appearing for the respondents states that there are no disputes, as the parties had arrived at full and final settlement of all their disputes and had also executed a settlement agreement dated 02.05.2014 (hereafter ‘the Settlement Agreement’), whereby the petitioner had agreed to accept a sum of ₹4.46 crores as the total amount due to the petitioner. In addition, the petitioner was also required to complete certain other works.

4. The learned counsel appearing for the petitioner does not dispute that the Settlement Agreement was entered into between the parties. He, however, states that there is an apparent mistake in the Settlement Agreement inasmuch as it proceeded on the basis that the final bill submitted by the petitioner was for a sum of ₹5.21 crores. He states that the

bill was of a sum of ₹5.51 crores and, therefore, a sum of ₹30 lakhs have not been considered at all.

5. He further submits that the petitioner had filed a suit for recovery of this additional sum, *inter alia*, pleading that the Settlement Agreement did not record the settlement in respect of all the claims. According to the petitioner, the said settlement only resolved the disputes to the extent of ₹5.21 crores and not the balance of about ₹30 lakhs. This is stoutly disputed by the learned counsel appearing for the respondent, who states that all disputes between the parties were fully settled.

6. This Court would have been reluctant to appoint an arbitrator, since the parties had, admittedly, entered into a settlement in writing. However, it is pointed out that the respondents had filed an application under Section 8 of the Act in the suit preferred by the petitioner (Suit No.2720/2016 captioned ‘M/s A. K. Builders v. Indian Institute of Packaging’), and the said suit was withdrawn in view of the said application. Thus, it was the stand of the respondents that the parties should be referred to arbitration in respect of the subject matter of the said suit. Given the stand of the respondents that the grievances being agitated by the petitioner are required to be referred to arbitration, the respondents cannot now be heard to urge to the contrary.

7. In view of the above, the present petition is allowed. The learned counsel appearing for the parties state that the matter may be examined by a sole arbitrator appointed by the Delhi International Arbitration Centre (DIAC). With the consent of the parties, it is directed that an arbitrator be appointed by DIAC. The arbitration shall be conducted under the aegis of

DIAC and in accordance with its Rules.

8. It is further directed that the arbitrator shall consider the respondents' plea that the matter has been fully settled and no disputes survive between the parties in the first instance.

9. The parties are directed to appear before the Co-ordinator, DIAC on 06.04.2018 at 11:00 AM.

10. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

MARCH 20, 2018

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