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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 20/2018

SHILPKAAR ARCHITECTS

..... Petitioner

Through: Mr.Udit Seth, Adv.

versus

RAMKRISHNA FORGINGS LTD.

..... Respondent

Through: Mr.R.Sudhinda, Mr.Anurag Tripathi,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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18.09.2018

This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the work of providing architectural and structural consultancy by the petitioner to the respondent.

The respondent challenges the maintainability of this petition on the ground that there is no Arbitration Agreement between the parties.

Counsel for the petitioner contends that in the present case, upon an offer being made by the petitioner to offer architectural and structural services vide its letter dated 25th October, 2012, the respondent made a counter offer vide its letter dated 1st November, 2012. The same was accepted by the petitioner vide its letter dated 3rd November, 2012 and therefore, a contract came into being. The

respondent thereafter vide its e-mail dated 6th November, 2012, circulated a draft Service Agreement containing an Arbitration Agreement between the parties in form of Clause 12 thereof. The petitioner has thereafter, performed the work and even received partial payment against the work done. He further submits that by the conduct of the parties, the Arbitration Agreement between the parties can be stated to have come into existence in terms of Section 7 of the Act.

I am unable to agree with the submission of the counsel for the petitioner. The e-mail dated 6th November, 2012 reads as under:-

“PFA the service agreement for shilpkaar architect. This is for your kind read and review.”

The petitioner has been unable to show any document by which it conveyed its acceptance to the terms of the Agreement. The petitioner has further been unable to show any exchange of letters, telegrams or other means of telecommunications, which would provide a record of the Arbitration Agreement between the parties. Section 7 of the Act reads as under:-

*“7. **Arbitration agreement.**—(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

*(4) An arbitration agreement is in writing if it is contained in—
(a) a document signed by the parties;*

(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

In the case of ***Karnataka Power Transmission Corporation Limited & Ors. vs. Deepak Cables (India) Ltd.***, (2014) 11 SCC 148, the Supreme Court has held as under:-

“8. From the aforesaid provision, it is graphically clear that unless an arbitration agreement stipulates that the parties agree to submit all or certain disputes which have arisen or which may arise in respect of defined legal relationship, whether contractual or not, there cannot be a reference to an arbitrator. To elaborate, it conveys that there has to be intention, expressing the consensual acceptance to refer the disputes to an arbitrator. In the absence of an arbitration clause in an agreement, as defined in sub-section (4) of Section 7, the dispute/disputes arising between the parties cannot be referred to the Arbitral Tribunal for adjudication of the dispute.”

It is no longer *res integra* that Arbitration Agreement is an agreement which is severable and *de hors* the main agreement between the parties. Therefore, only because the petitioner has performed the work as an architect and consultant, it cannot be said that the parties had also agreed to have their disputes resolved through arbitration. Arbitration being a special remedy which takes away the

rights of the parties to the normal Civil Court, has to be strictly construed.

In view of the above, in my opinion, the petitioner has been unable to show the existence of the Arbitration Agreement between the parties.

The petition is accordingly dismissed leaving it open to the parties to have their claims and counter claims adjudicated through the Court of competent jurisdiction. There shall be no order as to costs.

NAVIN CHAWLA, J

SEPTEMBER 18, 2018
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