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

+ O.M.P. (COMM) 1/2018
UNION OF INDIA

..... Petitioner

Through: Mr Ripu Daman Bhardwaj, CGSC
with Mr T. P. Singh, Advocate.

versus

ANS CONSTRUCTION LTD

..... Respondent

Through: Mr Sandeep Agarwal, Sr. Advocate
with Mr Sushil Aggarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.03.2018

IA No.4036/2018

1. The respondent has filed the present application for early hearing.
2. The learned counsel appearing for the petitioner (non applicant) has no objection to the same being allowed. Accordingly, the application is allowed and the petition is taken up for final hearing.

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3. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning the arbitral award dated 26.07.2017 rendered by the Arbitral Tribunal comprising of the Sole Arbitrator Shri V. K. Malik in respect of the disputes arising out of an agreement dated 06.09.2010 (being Agreement no.21/EE/LCD-II/2010-11). The said disputes were referred to arbitration and the same were numbered as arbitration case no.ARB/VKM/229 before the Arbitral Tribunal. The said arbitral proceedings culminated in the impugned award, whereby the Arbitral Tribunal awarded a total sum of ₹1,15,10,481/- against the claims of the respondent, *inter alia*, regarding

extra interest on repayment of mobilization advance and claim for interest on delayed payments.

4. Mr Agarwal, the learned Senior Counsel appearing for the respondent has handed over a letter dated 05.12.2017 sent by the Executive Engineer of the petitioner. The said letter reads as under:-

“M/s ANS Construction Ltd.

E-2/B1, Extn. Mohan,

Co-op. Indl. Estate,

Mathura Road,

New Delhi – 110044

Sub: Award dated 26.07.2017 made by Shri V.K. malik, Arbitrator in regard to the disputes arising out of agreement No. 21/EE/LCD-II/2010-11 and referred to arbitration in arbitration case no. ARB/VKM/229.

Dear Sirs,

With reference to the award mentioned above, I am to say that the President of India has decided to accept the award for total amount of Rs.64,26,089/- ((Rs.24,53,937/- (against Claim No. - 8 + Rs. 11,45,980/- (rectified as per mutual consent) (against Claim No. -9 / + Rs.2,12,426/- (part) (against Claim NO. -17 + Rs.9,15,389/- (against Claim No. -18)) i/c Interest @11% from 21.04.2014 to 26.07.2017 of Rs.16,98,357/- against total corrected amount of Award of Rs.1,10,67,412/- (original award amount is Rs.1,15,10,481/-) i/c interest @11% from 21.04.2014 to 26.07.2017 provided you accept the same as final and binding. Please intimate that you agree to accept payment of the sum awarded in full and final settlement of all your claims forming the subject matter of the reference to arbitration in the above case.

Yours faithfully

Executive Engineer

For and on behalf of the President of India”

5. Mr Agarwal states that the respondent is ready and agreeable to

accept the reduced payments as indicated in this letter as full and final settlement of their claims.

6. Mr Bhardwaj, the learned counsel appearing for the petitioner states that the said letter only refers to the settlement with regard to the claims preferred by the respondent and does not refer to the counter claims preferred by the petitioner, which were also subject matter of the impugned award.

7. The said contention is unpersuasive. A bare perusal of the aforementioned letter indicates that the petitioner had offered a consolidated sum of ₹64,26,089/- against the corrected award of ₹1,10,67,412/- in favour of the respondent. The said amount also includes adjustment of the counter claims awarded in favour of the petitioner. Thus, it is obvious that the settlement offered by the petitioner not only includes the claims preferred by the respondent but also the counter claims preferred by the petitioner.

8. It is seen that the petitioner had preferred two counter claims. The first claim was with regard to the imposition of liquidated damages for a sum of ₹2,22,08,532/-. The said liquidated damages were imposed on account of delay on the part of the respondent in executing the works. The Arbitral Tribunal had rejected the said claim, essentially, on two grounds; first, it found that both the parties were responsible for the delay, and second, that there was no evidence produced by the petitioner for substantiating its claim. In view of the above findings, the Arbitral Tribunal not only rejected the counter claim on account of liquidated damages but, consequently, also allowed the respondent's claim (Claim no 17) for recovery of ₹83,43,285/- from the running bills for non achievement of milestones. It is seen that Claim no.17 has been specifically mentioned in

the aforesaid letter dated 05.12.2017 as a part of the settlement.

9. The second claim made by the petitioner was with regard to the mobilization advance. A sum of ₹15,20,320/- had been awarded to the petitioner against the aforesaid counter claim, which was adjusted against the amount of ₹1,30,30,801/- awarded in favour of the respondent. Thus, a net a sum of ₹1,10,67,412/- was awarded in favour of the respondent. Thus the amount of counter claim awarded in favour of the petitioner had been adjusted to arrive at the final award of ₹1,10,67,412/- which, admittedly, forms a part of the settlement offered by the petitioner.

10. There is yet another aspect that clearly indicates that some of the claims awarded to the petitioner are predicated on the basis that the respondent was not solely responsible for delay in execution of the project. The petitioner having agreed to settle the claims awarded on the said basis cannot now urge that there was no delay on the part of the petitioner and liquidated damages ought to be imposed on the respondent.

11. Since, there is no dispute that the petitioner had sent the letter offering the settlement as stated therein and that the respondent had accepted the same, the petitioner cannot be permitted to resile from its offer.

12. The present petition is disposed of in view of the settlement arrived arrive between the parties. All pending applications are also disposed of.

VIBHU BAKHRU, J

MARCH 23, 2018/MK