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

*Judgment decided on: 09.07.2018*

\+ ARB.P. 835/2017

PRAGATI CONSTRUCTION CONSULTANTS

..... Petitioner

Through Mr. Sumit Bansal and Mr. Udaibir Singh, Advs.

versus

MINISTRY OF RAILWAYS

..... Respondent

Through Dr. Chaudhary Shamsuddin Khan, Adv.

**CORAM:**
**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**RAJIV SHAKDHER, J (ORAL)**

1. This is a petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (in short 'the Act') seeking appointment of an Arbitrator.

2. Upon notice being issued in the petition on 22.12.2017, a reply has been filed by the respondent. The respondent's main defence in the reply is that by virtue of accord and satisfaction the contract stands discharged and that no dispute survives regarding the outstanding amounts as claimed by the petitioner.

3. The record shows and there is no dispute with regard to the fact that upon the principal contract being executed, the

petitioner received an aggregate sum of Rs.3,76,14,229/- over different periods.

3.1 Furthermore, in addition thereto, the petitioner has been paid another sum equivalent to Rs.7,55,558/- towards Price Variation Clause (PVC).

3.2 These payments were, admittedly, made to the petitioner on 29.11.2017.

4. As per the record, as presently placed before me, it is the stand of the respondent that the work was completed way beyond the time provided under the principal contract dated 30.11.2013 (in short 'principal contract').

4.1 According to the respondent, the work had to be completed on or before 28.02.2014 i.e. six months from the date of issuance of letter of acceptance. The bid filed by the petitioner was accepted on 29.08.2013.

5. The petitioner claims that insofar as the extra works are concerned, its additional claim had not been paid and, therefore, the dispute with regard to the outstanding payments arose *vis-à-vis* the respondent.

6. It is, however, not disputed that upon issuance of the completion certificate and against the final bill No.115/08/17, dated 19.8.2017, a further sum of Rs.11,40,486/- was paid to the petitioner.

7. It also emerges, upon perusal of the record, that under the principal contract, there is a provision under Clause 9.8 for execution of a supplementary agreement.

7.1 In brief, the supplementary agreement is, broadly, in the nature of a no claim certificate which the contractor, who, in this case is the petitioner, was required to execute to secure release of the sum of Rs.11,40,486/- against the final bill.

8. It is the case of the petitioner that it had no choice in the matter, that is, it had to execute the supplementary agreement dated 17.8.2017 as without execution of the same, the said sum i.e. 11,40,486/-, would not have been released in its favour.

9. In other words, the plea advanced on behalf of the petitioner is that there was coercion and duress exerted on the petitioner to have the supplementary agreement executed.

10. On the other hand, Mr. Shamshudin, who, appears for the respondent, says that a mere perusal of the supplementary agreement would show that there is complete accord and satisfaction and consequent discharge of obligations contained in the subject contract.

11. I have heard the learned counsel for the parties and perused the record.

12. To my mind, the only issue that arises before this Court is: as to whether there is on record, material available to show

that there is accord and satisfaction. The most crucial document, to come to this conclusion, one way or the other, is, in fact, the supplementary agreement itself. A bare perusal of the supplementary agreement would show that at the point where the contractor i.e. the petitioner's representative has appended his signature, there is an endorsement to the effect 'signed under coercion and duress'. This endorsement, however, as is evident, on a bare perusal, has been scored out.

13. In my view, this aspect of the matter will have to be examined by the learned Arbitrator as parties would need to lead evidence qua this issue.

13.1 That the Court is empowered to request the Arbitrator to return a finding on this aspect of the matter is an aspect which is clearly borne out from the dicta of the judgment of the Supreme Court in *National Insurance Company Limited v. Bhogra Polyfab Private Limited,* (2009) 1 SCC 267. This judgment has been cited with approval by the Supreme Court in the case of *ONGC Mangalore Petrochemicals Limited v. Ans Constructions Limited and Anr.,* (2018) 3 SCC 373.

14. I may also indicate, as would be evident from the dates and events referred to hereinabove, that while the supplementary agreement was executed on 17.08.2017, the payment under the supplementary agreement, even as per the respondent, was released on 29.11.2017 i.e. after the execution of the supplementary agreement.

14.1 I may also note that it is the petitioner's case, though, that the payments were released much later i.e. on 04.12.2017.

15. Be that as it may, the sense that I have, which is *prima facie* in nature, is that there has been no genuine accord and satisfaction. This observation, though, will be subject to the parties leading the evidence and the learned Arbitrator coming to a final conclusion in the matter.

16. Accordingly, in my view, the petition deserves to be allowed. It is ordered accordingly.

17. Resultantly, Hon'ble Mr. Justice Badar Durrez Ahmad is appointed as Arbitrator in the matter.

18. Parties agree that the arbitration proceedings can be governed by the Rules and Schedule of fee prescribed by the Delhi International Arbitration Centre (DIAC).

18.1 The said statement is taken on record.

19. Petition is disposed of in the above terms.

20. The Registry will dispatch a copy of this order to the learned Arbitrator as well as the DIAC.

**RAJIV SHAKDHER**
**(JUDGE)**

**JULY 09, 2018**
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