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

+ **ARB.P. 255/2019**

**M/S A K BUILDERS THROUGH: SHRI ARUN KUMAR
TANDON**

..... Petitioner

Through: Mr.Sajay Bansal, Adv.

versus

STATE BANK OF INDIA

..... Respondent

Through: Mr.Rajiv Kapur, Ms.Khushboo
Kapur, Mr.Sourav Singh Tomar and
Ms.Shashangi Rathore, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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29.08.2019

1. This petition has been filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act seeking appointment of an arbitrator.
2. Learned counsel for the petitioner states that the Respondent/Bank had awarded the work of construction of a building on plot no. B-3/2 Sector 64 Noida for SBI, Gautam Budh Nagar, Uttar Pradesh.
3. An agreement was entered between the parties. According to the learned counsel for the petitioner, there is an Arbitration clause in terms of clause 37, in the agreement. In this regard he has drawn my attention to page 4 of the document filed by him.
4. It is the case of the petitioner that the petitioner has not been paid the due amounts under the agreement.
5. In other words, full payment has not been made pursuant to the work executed by the petitioner.

6. Mr.Rajiv Kapur, learned counsel for the respondent would submit that a reply has been filed in the registry. I find the same is not on record. He has handed over a copy of the reply as filed in the registry to me. The same is taken on record.

7. According to him, the Respondent / Bank *vide* letter dated February 18, 2019 has released the complete payment to the petitioner, which has been duly acknowledged by the petitioner without reserving any right. The petitioner having accepted full and final payment of the security deposit and liquidated damages as claimed, the relief now been sought for appointing an independent sole arbitrator in terms of Arbitration clause 37 of the agreement is not maintainable.

8. On the other hand, the learned counsel for the petitioner denies the fact that the petitioner is satisfied with the payment as received from the Respondent/Bank *vide* letter dated February 18, 2019. He submits that the petitioner has accepted the payment without prejudice to its rights.

9. Having noted that rival submissions, this Court is of the view that there is a dispute which has arisen between the parties inasmuch as whether the petitioner has received the complete payment. There is as per agreement between the parties, an Arbitration clause in terms of clause 37.

10. At this stage, learned counsel for the petitioner has relied upon an order dated July 5, 2019, passed by the Coordinate Bench of this Court in ARB.P. 250/2019 to contend that in similar circumstances against the Respondent Bank, this Court had appointed an arbitrator by disallowing the objection taken by the Respondent / Bank by relying on the judgment of the Supreme Court in the case of *UOI v. Parmar Construction Company 2019 5 scale 453*.

11. I have perused the order passed by the Coordinate Bench of this Court. Being in agreement with the conclusion drawn by the Coordinate Bench of this Court, I am of the view that an arbitrator is required to be appointed and I accordingly appoint Mr.S. R. Pandey (Resident of 195 R. M. Apartments Indera Prastha Extension, Delhi-110092 & his Mobile No. 9810275731), retired Additional Director General, CPWD, who has been appointed as an arbitrator in ARB.P. 250/2019, as an arbitrator.

12. Appointment of the arbitrator shall be regulated by the provisions of the Arbitration and Conciliation Act, 1996. The petitioner shall be at liberty to take all pleas as available to it.

13. The petition is disposed of.

V. KAMESWAR RAO, J

AUGUST 29, 2019/bh