

\$~2

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

+ **O.M.P. 85/2010**

MIRKANA ENGINEERING PVT LTD Petitioner
Through: Mr. Ashok Chhabra, Advocate (M-9810008481).

versus

RAJ KUMARI GUPTA Respondent
Through: Mr. Harish Malhotra, Senior Advocate with Mr. Rajender Agarwal, Advocate (M-9810651681).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **01.11.2018**

1. The present dispute arises out of award dated 30th October, 2009, passed by the Ld. Sole arbitrator, by which the claims and counter claims of the parties were dismissed.
2. The brief background is that the Claimant is an authorized dealer of TATA Motors and is in the business of purchase, sale and service of light vehicle manufactured by TATA Motors. The Petitioner wanted to set up a showroom-cum-service centre of TATA Motors and accordingly entered into an MOU dated 7th December, 2004 for leasing a space measuring 36,000 sq. ft. in plot no.56, Rama Road, Najafgarh Road, Industrial Area, New Delhi. As per the MOU, the parties agreed that the property would be handed over to the Petitioner in two phases i.e. 15th April, 2005 for the work shop area and 15th July, 2005 for show room area. The Petitioner had paid a

sum of Rs.19 lakhs as advance towards security deposit. Thereafter, the Respondent was to undertake various jobs/works in the demised premises to make it suitable for the Petitioner purposes. For various reasons, the tenancy did not fructify. The Petitioner sought refund of sum of Rs.19 lakhs which was not given. The Petitioner then invoked the arbitration clause and raised claims towards refund of security deposit as also loss of profits. On the other hand, the Respondent raised claims in respect of the expenses of Rs.26 lakhs incurred on the jobs/works undertaken in the premises for the purpose of the Petitioner. The Learned Arbitrator dismissed both the claims and counter claims.

3. The main objection is in respect of refund of security deposit of Rs.19 lakhs which was made by the Petitioner to the Respondent. It is the submission of Mr. Ashok Chhabra, Ld. Counsel for the Petitioner that the Ld. Arbitrator has failed to consider clause 11 of the agreement by which, if for any genuine reason, the tenancy does not fructify, the sum of Rs.19 lakhs was to be refunded.

4. On the other hand, Mr. Harish Malhotra, Ld. Senior Counsel for the Respondent submits that the Respondent incurred a huge sum as expense in preparing the property for giving it on rent to the Petitioner and the Ld. Arbitrator in view thereof has rejected the claim for refund. The expenses incurred by the Respondent are to the tune of Rs.26 lakhs.

5. After some arguments, both counsels agree, under instructions from their respective clients who are present in court, that they are willing to settle their disputes. The Respondent agrees to pay a sum of Rs.9 lakhs to the Petitioner within a period of four weeks from today. The Petitioner agrees to accept the said payment of Rs.9 lakhs, as full and final settlement

of all disputes in respect of MOU dated 7th December, 2004 read with addendum dated 21st February, 2005. The impugned award shall stand modified in terms of the settlement. No further order as to costs.

6. The payment shall be made within a period of four weeks by the Respondent, by way of cheque in the name of the Petitioner to be handed over to the counsel for the Petitioner.

7. The OMP is accordingly disposed of as settled. No order as to costs.

PRATHIBA M. SINGH, J

NOVEMBER 01, 2018

Rahul