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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 597/2018

SONA CORPORATION INDIA PVT. LTD.

..... Petitioner

Through: Mr.A.K. Singla, Sr. Adv. with
Mr.Rahul Shukla & Mr.Abhimanyu,
Advs.

versus

INGRAM MICRO INDIA PVT. LTD. & ANR.

..... Respondents

Through: Mr.Sudhir Kumar & Ms.Shomila
Bakshi, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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06.09.2018

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 respect of two separate Lease Deeds both dated 18.06.2013 executed between the parties. The said Lease Deeds contain an Arbitration Agreement in form of Clause 19 thereof, which is reproduced hereinbelow:-

"19. DISPUTE RESOLUTION, GOVERNING LAW AND JURISDICTION

In the event of any dispute or difference arising between the Lessee and the Lessor out of the terms of this Lease Deed or in interpreting the terms of this Lease Deed or with respect to performance of their respective obligations, the Parties shall resolve differences through mutual discussions. In case, the Parties fail to settle the disputes through mutual discussions within 30(thirty) days from the date of the dispute is first aroused,

then the rights and obligations of the Parties under or arising out of this Lease Deed shall be construed, governed and enforced in accordance with the Arbitration and Conciliation Act, 1996 and the courts in Delhi shall have the exclusive jurisdiction.”

Disputes having arisen between the parties, the petitioner invoked the Arbitration Agreement vide its notice dated 25.05.2018. Having received no respondent, the present petition was filed.

Learned counsel for the respondent submits that in effect there is no dispute between the parties that needs adjudication. He further submits that the claims raised by the petitioner are contrary to the terms of the Lease Deeds. He further submits that the Arbitration Agreement has not been properly invoked by the petitioner inasmuch as the petitioner has not made any endeavour to first amicably resolve the disputes through mutual discussion. He further submits that thirty days period is granted in terms of Clause 19 of the Lease Deeds for the purpose of such mutual discussion.

I do not find any merit in the contentions raised by the counsel for the respondent. There is a dispute between the parties in relation to the rights of the respondent to terminate the Lease Deeds and other terms of the Lease Deeds, which would be covered under Clause 19 of the Lease Deeds as it also involves the interpretation of the Lease Deeds.

As far as the attempt at resolution of the disputes through mutual discussion is concerned, the petitioner invoked the Arbitration Agreement on 25.05.2018 and has filed the present petition on 10.08.2018. In any case, the clause providing for mutual discussion cannot be held to be mandatory where it is apparent on the face of the record that the parties cannot arrive at a settlement. In the present case before filing of the present petition, the

petitioner had filed two applications under Section 9 of the Act being OMP (I) (COMM) 249/2018 and OMP (I) (COMM) 250/2018. The same were disposed of by this Court vide its order dated 25.07.2018. These petitions show that the parties could not arrive at an amicable settlement requiring the intervention of this Court by way of the present petition.

In view of the above, I see no impediment in appointing an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Lease Deeds. Though the disputes are in relation to two distinct Lease Deeds both dated 18.06.2013, the counsels for the parties submit that a single arbitration proceeding is to be conducted in respect of these Lease Deeds as both Lease Deeds relate to the same property.

I accordingly appoint **Mr. Dinesh Dayal**, Retd. ADJ, Delhi (R/o 9, Upper Bela Road, Civil Lines, Delhi-110054, Mobile: 9810100200) as a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Lease Deeds. The Arbitrator shall give disclosure under Section 12 of the Act before proceeding with the reference.

The petition is allowed in the above terms, with no order as to cost.

NAVIN CHAWLA, J

SEPTEMBER 06, 2018/rv