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

+ ARB.P. 317/2019

M/S RATEGAIN TRAVEL TECHNOLOGIES PRIVATE
LIMITED

..... Petitioner

Through:

versus

M/S PLUTO SOFTWARE PRIVATE
LIMITED

..... Respondent

Through: Mr. K. Sunil, Ms. Srishti Prasad and
Mr. Sushil Tripathi, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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06.11.2019

1. This petition has been filed by the petitioner under Section 11 (6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.
2. It is the case of the petitioner that a lease deed dated June 12, 2016 (“lease deed”, for short) was executed for 11th Floor, Tower-B, Windsor IT Park located at A-1, Sector-125, NOIDA, UP between the petitioner and respondent.
3. On August 24, 2017, notice of termination of the lease deed was given to the respondent by the petitioner. On November 24, 2017, possession of the floor was handed over to the respondent and the letter of handing over was signed by the respondent. After handing over the possession of the floor, respondent raised a list of repair work incurred by them on the petitioner. Meetings were held to resolve the issue amicably between the

parties. When no resolution could be made, the petitioner filed a suit for recovery under Order XXXVII of CPC before the Additional District Judge, Saket. The respondent filed memo of appearance. The suit was dismissed on an application filed by the respondent under Section 8 of the Arbitration and Conciliation Act, 1996. Thereafter on December 6, 2018, petitioner issued a notice invoking arbitration to the respondent for giving consent for the appointment of an Arbitrator. It appears that on December 19, 2018, the respondent sent a reply to the notice dated December 6, 2018 whereby the respondent denied the contents of the notice and called upon the petitioner to withdraw the notice, being illegal and not in accordance with the terms and conditions of the lease deed. My attention has been drawn to Article 18 of the lease deed to show that the place of arbitration shall be New Delhi.

4. Mr. K. Sunil, learned counsel appearing for the respondent states that the lease deed was not registered. That apart, it is his submission that as per the lease deed, the petitioner was to first comply with the first part of the lease deed, inasmuch as, the disputes having arisen, were required to be resolved through the process of consultation within a period of 60 days after the commencement of the discussions. In the instant case no steps have been taken by the petitioner. Hence, the arbitration clause under Article 18 of the terms and conditions of the lease deed cannot be invoked.

5. I am not in agreement with both the submissions made by the counsel for the respondent. It is not the case of the petitioner that there is a deficiency of stamp duty paid on the lease deed. Further an arbitration agreement does not require registration under the Registration Act, 1908. The Supreme Court in the case of *SMS Tea Estate Pvt. Ltd. v. Chandmari Tea Company Pvt. Ltd.* 2011 (14) SCC 66 held, even if it is found as one of

the clauses in a contract has an arbitration clause, it is an independent agreement to refer the disputes to arbitration. Therefore, having regard to the proviso to Section 49 of the Registration Act, 1908 read with Section 16(1)(a) of the Act, an arbitration agreement in an unregistered but compulsorily registrable document can be acted upon and enforced for the purpose of dispute resolution by arbitration. Even the plea that consultation of 60 days has not been adhered to, appears to be factually incorrect inasmuch as a positive statement has been made by the petitioner submitting that the consultation did take place between the parties, but had resulted in failure. It is after the failure of the talks that the petitioner has invoked the arbitration clause. If that be so, there is no impediment for appointing an Arbitrator. Accordingly, this court appoints Justice Veena Birbal, a retired Judge of this court as the sole Arbitrator, who shall adjudicate the inter-se disputes between the parties. The appointment of Justice Veena Birbal (Retd.) shall be regulated by the DIAC Rules. The parties shall appear before the learned Arbitrator after taking a prior appointment on the mobile of Justice Veena Birbal (Retd.) being 9871300041. Let a copy of the order be sent to Justice Veena Birbal (Retd.) for information.

The petition stands disposed of.

V. KAMESWAR RAO, J

NOVEMBER 06, 2019/jg