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

+ ARB.P. 331/2019

VIJAYLAKSHMI VERMA Petitioner

Through: Ms.Badana Grover, Advocate

versus

HT LEARNING CENTRES LTD. Respondent

Through: Mr.Puneet Bajaj, Advocate

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **22.01.2020**

1. The petitioner is seeking appointment of an arbitrator under Section 11(6) the Arbitration and Conciliation Act. The petitioner has claims to the tune of Rs.10,00,000/-.
2. The arbitration agreement between the parties is contained in clause No.12 of the registered lease deed dated 14th May, 2015. The petitioner invoked the arbitration vide notice dated 11th February, 2019.
3. The arbitration agreement and the invocation notice are not disputed. The respondent replied to the invocation notice dated 11th February, 2019 on 14th March, 2019.
4. The respondent is objecting to the appointment of the arbitrator on the ground that the disputes between the parties are not arbitrable.
5. Learned counsel for the respondent urged at the time of the hearing that the disputes between the landlord and tenant cannot be referred to arbitration. Reliance is placed on *Natraj Studios (P) Ltd. vs. Navrang Studios* (supra), *Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd.* (supra), *Himangni Enterprises vs. Kamaljeet Singh Ahluwalia* (supra) and

Ranjit Kumar Bose vs. Ananya Choudhary (supra). It is submitted that the judgment of ***Himangni Enterprises vs. Kamaljeet Singh Ahluwalia*** (supra) has been referred to the larger Bench.

6. Learned counsel for the petitioner urged at the time of the hearing that the disputes between a landlord and tenant are arbitrable except the disputes which are governed by the special statutes by which the tenant enjoys statutory protection and specified Courts have been conferred jurisdiction to grant eviction, as held in ***Natraj Studios (P) Ltd. vs. Navrang Studios***, 1981 (1) SCC 524 and ***Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd.***, (2011) 5 SCC 532 relied upon by the respondent. With respect to ***Himangni Enterprises vs. Kamaljeet Singh Ahluwalia***, AIR 2017 SC 5137 relied upon by the respondent, it is submitted that the Supreme Court declined the reference of disputes to arbitrator on the ground that the lease was a monthly lease as the lease deed between the parties had expired by efflux of time in 2013 and there was no arbitration agreement between the parties when the suit was instituted on 17th August, 2015. It is submitted that this Court in ***Rani Suri vs. Swarantech Information Systems Pvt. Ltd.***, decided on 19th September, 2018 in Arb.P.430/2018 distinguished ***Himangni Enterprises vs. Kamaljeet Singh Ahluwalia*** (supra). Relevant portion of the aforesaid judgment is reproduced hereunder:

- “3. The petitioner claiming arrears of rent being due from the respondent, issued a notice dated 23rd April, 2018 to the respondent seeking reference of the disputes to arbitration and suggesting that the arbitration be held under the aegis of Delhi International Arbitration Centre.
4. The respondent by its reply dated 22nd May, 2018 disputed the existence of any arrears of rent and therefore, refused to accept the appointment of an Arbitrator or reference of the disputes to arbitration.
5. As the parties could not agree on the appointment of an Arbitrator, the present petition was filed.

6. *The respondent does not deny the execution of the Lease Deed or the existence of the Arbitration Agreement therein.*
7. *Counsel for the respondent relying on the judgment of the Supreme Court in **Himangni Enterprises vs. Kamaljeet Singh Ahluwalia** AIR 2017 SC 5137, submits that the disputes with respect to tenanted premises are not arbitrable in nature. He has placed reliance on paragraph 26 of the judgment, which is quoted hereinbelow:*

“26. The Delhi Rent Act, which deals with the cases relating to rent and eviction of the premises, is a special Act. Though it contains a provision (Section 3) by virtue of it, the provisions of the Act do not apply to certain premises but that does not mean that the Arbitration Act, ipso facto, would be applicable to such premises conferring jurisdiction on the arbitrator to decide the eviction/rent disputes. In such a situation, the rights of the parties and the demised premises would be governed by the Transfer of Property Act and the civil suit would be triable by the Civil Court and not by the arbitrator. In other words, though by virtue of Section 3 of the Act, the provisions of the Act are not applicable to certain premises but no sooner the exemption is withdrawn or ceased to have its application to a particular premises, the Act becomes applicable to such premises. In this view of the matter, it cannot be contended that the provisions of the Arbitration Act would, therefore, apply to such premises.”

8. *I am unable to agree with the submission made by the counsel for the respondent. In the case of **Himangni Enterprises(supra)**, the Supreme Court was dealing with the case where the lease deed containing the Arbitration Agreement executed between the parties had expired by the efflux of time and it was an admitted case of the parties that thereafter, no fresh Lease Deed was executed for extension of the time period. The tenant was therefore, occupying the property on a month to month basis without any written documents containing Arbitration Agreement. It was in those facts that the High Court had held that there was no Arbitration Agreement in existence between the parties therein and the said finding was affirmed by the Supreme Court. The Supreme Court in para 26 stated that only because the Delhi Rent Control Act*

is not applicable, it would not ipso facto mean that there is an Arbitration Agreement in existence or that the disputes have to be necessarily referred to arbitration. In the absence of an Arbitration Agreement, the parties cannot be referred to arbitration, this is all that the Supreme Court has held in the above judgment.

9. *I may also note that the Supreme Court in **Himangni Enterprises** (supra) also relied upon the judgment of the Supreme Court in **Natraj Studios(P) Ltd. vs. Navrang Studios & Anr.** 1981 (1) SCC 523, which was a case where there was a statutory protection granted to the tenant under Section 28(1) of the Bombay Rent Act which vests exclusive jurisdiction in the Court of Small Causes to entertain and try any suit or proceeding between the landlord and tenant relating to the recovery of rent or possession of any premises. It was in those facts that the Civil Suit filed by the landlord was held to be maintainable by the Court.*
10. *The Supreme Court further placed reliance on the earlier judgment of Supreme Court in **Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. & Ors.** AIR 2011 SC 2507. I may only quote para 22 of the said judgment as under:*

“22. Arbitral tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of arbitral tribunal is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by a public fora (courts and Tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.

The well recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which given rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes."

(emphasis supplied)

11. *A reading of the above would clearly show that the Supreme Court had clarified that it is only in cases where eviction or tenancy matters are governed by special statutes and where the tenant enjoys statutory protection against eviction and only the specified Courts are conferred jurisdiction to grant eviction or decide the dispute, that the same cannot be referred to arbitration.*
12. *In the present case, as the provisions of Delhi Rent Control Act do not apply to the premises in question, no such bar exists.*
13. *In view of the above, the judgment of the Supreme Court in **Himangni Enterprises** (supra) would be of no assistance to the contention of the respondent.*
14. *As the Lease Deed, existence of the Arbitration Agreement and the due invocation thereof are not denied by the respondent and it is also not the case of the respondent that the tenancy in question would fall under the provisions of the Delhi Rent Control Act, I see no impediment in appointing a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the Lease Deed dated 2nd August, 2010."*

7. In the present case admittedly, the respondent is neither governed by the Delhi Rent Control Act/any other special statute nor does the tenant enjoy any statutory protection. The disputes between the parties relate to the period during the validity of the lease deed and the lease was not monthly

lease as in *Himangi Enterprises vs. Kamaljeet Singh Ahluwalia* (supra). In that view of the matter, there is no impediment in the appointment of the arbitrator by this Court. This Court is in complete agreement with *Rani Suri vs. Swarantech Information Systems Pvt. Ltd.* (supra) in which this Court distinguished *Himangni Enterprises vs. Kamaljeet Singh Ahluwalia* (supra) and referred the disputes between landlord and tenant to the arbitrator. There is no merit in the submissions of the respondent which are hereby rejected.

8. The petition is allowed and Mr.Aavishkar Singhvi, Advocate, Mobile No.9910752281 is appointed as a sole arbitrator to adjudicate the disputes between the parties.

9. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC).

10. The learned arbitrator shall ensure the compliance of Section 12 read with Fifth, Sixth and Seventh Schedule of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

11. The fee of the learned arbitrator shall be in accordance with the Schedule of fees prescribed under the Delhi High Court Arbitration Centre (Administrative Costs and Arbitrators' Fees) Rules.

12. Copy of this order be sent to Delhi International Arbitration Centre (DIAC).

13. Copy of this order be sent to the learned arbitrator.

14. Copy of this order be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

JANUARY 22, 2020

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