

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

+ **Arb. P. No.131/2009**

Date of decision: 11.09.2009

NUURRIE MEDIA LTD. Petitioner

Through: Mr. M.A. Khan, Advocate

Versus

INDIAN TOURISM DEVELOPMENT CORP. LTD. & ANR.. Respondents

Through: Dr. Kumar Jwala, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

RAJIV SAHAI ENDLAW, J.

1. This petition has been preferred under Section 11 (6) of the Arbitration Act, 1996.
2. The petitioner was a licensee with respect to certain rooms in the Ashok Hotel, Chanakya Puri, New Delhi under the respondent.

The said License Deed contained an arbitration clause as under:-

“In respect where provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 can be invoked by the Licensor in respect of the licensed premises the provision of the said Act shall apply. In respect of any other dispute or difference relation to the terms of this license deed, the matter shall be referred to the sole arbitration of the Vice President (Hotels) or any other person appointed by him in his behalf. The award given by the arbitrator shall be binding upon the parties. It is specifically agreed by the Licensees that it will have no objection to any such appointment that the arbitrator so appointed shall have power to extend the time for making an award. Save as above, the said Arbitrator shall act under provisions of the Arbitration and Conciliation Act 1996. Subject to above, only Delhi Court will have jurisdiction.”

3. It is the contention of the petitioner that it has claims against the respondent for losses on account of the respondent having failed to provide the services which the respondent had agreed to provide under the License Deed and with respect to issuance of TDS Certificates etc. The petition was preferred upon the Vice President (Hotels) of the respondent, in spite of notice, failing to appoint the arbitrator.

4. Since the arbitration clause itself provides that it is with respect to the disputes not covered by the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, attention of the counsel for the petitioner was invited to the definition of "rent" in Section 2 (f) of the Said Act as including any charge on account of any other service in connection with the occupation of the premises. It is however the contention of the counsel for the petitioner that the claims of the petitioner against the respondent cannot be subject matter of the proceedings under the Public Premises Act and the arbitrator be appointed for adjudication of the said claims.

5. I may notice that this court also in ***M/s Exclusive Motors Pvt. Ltd. Vs. ITDC*** in OMP No.1838/2008 decided on 4th April, 2008 and in ***M/s Exclusive Motors Pvt. Ltd. Vs. ITDC*** MANU/DE/08/34/2009 and ***Harjit Singh Vs. DDA*** MANU/DE/0397/2009 has held that there can be no arbitration with respect to the disputes covered under the Public Premises Act.

6. The existence of the arbitration agreement and the petitioner being party thereto and this court being the appropriate court to be
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approached under Section 11 of the Act, being not disputed, the petition is allowed. However, the question whether a particular claim/dispute raised by the petitioner is arbitrable or not in the light of the aforesaid is left open to be adjudicated by the Arbitrator.

7. The counsel for the petitioner has stated that his claim shall be of over Rs.1.5 crores.

8. Accordingly, Mr. G.P. Thareja, Retired Additional District Judge is appointed as the arbitrator. The consolidated fee of the arbitrator is fixed at Rs.75,000/- to be borne initially by the petitioner and subject to award as to costs and besides out of pocket expenses. It is clarified that merely because an arbitrator has been appointed will not be a ground for the petitioner to resist the claims of the respondent under the Public Premises Act or otherwise and this order or the pendency of the arbitration not to come in the way of any remedies of the respondent against the petitioner or the premises subject matter of agreement, under the Public Premises Act or under any other law.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**September 11th, 2009
PP**