I-22 and 23

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

\+ O.M.P. 727/2011

I.T.E INDIA PVT LTD ..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with Ms. Neeru Sharma and Mr. Deepak Vij, Advocates

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT CORPORATION LTD AND OTHERS

..... Respondents

Through: Mr. Vikas Singh, Sr. Advocate with Mr. Rajeev Sharma, Mr. Sahil Bhalaik and Mr. Uddyam Mukherjee, Advocates

\+ O.M.P. 870/2011

I.T.E INDIA PVT LTD ..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with Ms. Neeru Sharma and Mr. Deepak Vij, Advocates

versus

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT CORPORATION ..... Respondent

Through: Mr. Vikas Singh, Sr. Advocate with Mr. Rajeev Sharma, Mr. Sahil Bhalaik and Mr. Uddyam Mukherjee, Advocates

\+ CCP 76/2012 in O.M.P. 870/2011

I.T.E INDIA PVT LTD ..... Relator

Through: Mr. Sandeep Sethi, Sr. Advocate with Ms. Neeru Sharma and Mr. Deepak Vij, Advocates

Signature Not Verified
Digitally Signed
By:AMULYA

versus

MR. G.G. SAXENA AND ORS. ..... Alleged Contemnor

Through: Mr. Vikas Singh, Sr. Advocate with
Mr. Rajeev Sharma,
Mr. Sahil Bhalaik and
Mr. Uddyam Mukherjee,
Advocates

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **07.11.2012**

1. The disputes leading to filing of these petitions under Section 9 of Arbitration and Conciliation Act, 1996 arise out of a contract dated 8th August, 2005 containing an arbitration clause between the parties relating to a commercial outlet in the Garden of Five Senses located at Said-ul-ajaib, Saket, New Delhi. The said contract was for a period of ten years.

2. O.M.P. 727/2011 was filed seeking interim measures restraining the respondent from encashing a bank guarantee furnished by the petitioner in favour of the respondent in terms of the said agreement. Vide *ex parte* order dated 26th September, 2011 in the said O.M.P., subject to the petitioner renewing the bank guarantee, the respondent was restrained from encashing the same.

3. O.M.P. 870/2011 has been filed, (i) to restrain the respondent from terminating the agreement in contravention of the terms thereof; (ii) to restrain the respondent from dispossessing the petitioner from the said commercial outlet without following the due process of law; and, (iii) to declare the letter dated 13th October, 2011 of the respondent of termination

of the agreement as null and void.

4. Vide consent order dated 16th December, 2011, the petitioner, without prejudice to its rights and contentions agreed to deposit a sum of Rs.15 lac with the respondent, which the respondent agreed to accept, again without prejudice to its rights and contentions; it was further agreed that the bank guarantee subject matter of O.M.P. 727/2011 shall be kept alive till further orders of this Court and the petitioner will continue to pay the license fee to the respondent and the respondent will furnish the invoices for the service tax to the petitioner and upon which the petitioner will pay the service tax to the respondent; it was further agreed that till the next date of hearing, no coercive action will be taken by the respondent against the petitioner; the TDS certificates were also handed over by the petitioner to the respondent in Court on the date of the order. The said interim arrangement has continued till now.

5. Senior counsel for the respondent has today contended that in spite of the petitions under Section 9 having been filed more than one year ago, no steps towards the arbitration proceedings have been taken till now. Relying on ***Sundaram Finance Ltd. vs. NEPC India Ltd.,*** (1999) 2 SCC 479, it is contended that the petitions under Section 9 are liable to be dismissed because the petitioner has failed to initiate arbitration. Learned senior counsel further, under instructions, states that the respondent will take proceedings under the Public Premises Eviction and Unauthorized Documents Act, 1971 for dispossession of the petitioner from the said commercial outlet and shall not dispossess the petitioner otherwise. It is further stated that subject to the petitioner keeping the bank guarantee subject matter of O.M.P. 727/2011 alive, the respondent will not encash the

same till liability is finally determined in accordance with law. It is yet further contended that no restraint of termination can be granted in Section 9 proceedings and in any case, as is obvious from the prayer paragraphs in OMP No.870/2011, the termination had already been effected prior to the filing of the petition and the question whether the termination is in accordance with the agreement and law cannot be decided in these proceedings.

6. The counsel for the petitioner states that an application under Section 11 of the Arbitration and Conciliation Act, 1996 has already been filed and though was attempted to be got listed for today only, has not been listed. The counsel states that for the sake of expediting, this Court may appoint the Arbitrator also today itself.

7. Senior counsel for the respondent opposes the oral prayer for appointment of Arbitrator.

8. On the statement of the counsel for the petitioner that an application under Section 11 has been filed though not listed and though there is indeed considerable delay in filing the same, but in the entirety of facts, it is not deemed expedient to reject these petitions on the said ground.

9. These petitions are disposed of, accepting the statements aforesaid on behalf of the respondent, i.e., not to dispossess the petitioner from the commercial outlet save by following the due process of law and not to encash the bank guarantee till adjudication of liabilities in accordance with law. The petitioner, in turn, is directed to keep the bank guarantee alive till adjudication of the commercial disputes between the parties. The petitioner is further directed to continue to pay the license fee and other dues and service tax to the respondent regularly and to also hand over TDS

certificates from time to time when due.

9. O.M.P. 727/2011 and O.M.P. 870/2011 are disposed of in terms of the above.

10. Contempt by the respondent Nos.1 to 5 (in the CCP), being officials of respondent DTTDC, of order dated 16th December, 2011 in O.M.P. 870/2011 is alleged. It is argued by the senior counsel for the Relator that notwithstanding the consent order dated 16th December, 2011 in the said O.M.P. whereunder the respondent was restrained from taking any coercive steps against the petitioner, letters dated 12th January, 2012, 2nd April, 2012 (e-mail), 18th May, 2012, 11th May, 2012 have been addressed by the respondents to the petitioner and to the sub-licensees of the petitioner in the commercial outlet licensed by the respondent to the petitioner and the respondent ultimately vide notice dated 18th/19th July, 2012 affixed outside the premises also restrained one of the said sub-licensees from parting with possession and occupying the premises unless it paid the occupation charges within a period of 24 hours of the said affixation.

11. Notice of the CCP was issued and reply affidavits have been filed by the respondents therein.

12. As far as the letters, save the last one, are mentioned, I am of the considered opinion that the same cannot fall in the category of coercive action which had been restrained. Vide the said letters, demands were made by the respondents on the petitioner or on the sub-licensees of the petitioner of the amounts, which, according to the respondents, were due from the petitioner. No coercive steps for recovery of the amount was taken. Merely making a demand would not fall within the words "coercive action". However, as far as the notice dated 18th/19th July, 2012 is

concerned, the same, no doubt by prohibiting use and occupation, was a coercive step.

13. However the senior counsel for the alleged contemnors, from the replies filed by the respondents shows that the same was done on the advice obtained by the respondents. The senior counsel for the respondents, explains that the said notice was issued in pursuance to the letter dated 19th May, 2012 received from the Relator itself. The petitioner vide the said letter informed the respondents of the termination by the petitioner of the sub-license of the said sub-licensee and objected to the respondents approaching the sub-licensee directly. It is the contention of the senior counsel that the said letter of the Relator was construed by the respondents as enabling the respondents to take steps for preventing the said sub-licensee whose sub-licence had been terminated by the Relator from occupying the premises inasmuch as the respondents alone had the said power and the respondents intended to, upon so evicting the said sub-licensee, restore possession of the said portion to the petitioner only.

14. Though the aforesaid explanation is controverted by the senior counsel for the Relator but considering that the petitioner/Relator is still in possession of the commercial outlet and in the OMPs, a statement has been made by the respondents not to disturb possession of the petitioner/Relator save by due process of law, it is not deemed expedient to proceed with this contempt any further and to give benefit of doubt to the respondent.

The contempt petition stands disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 07, 2012/km