

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

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ARB.A. 10/2014

AGER HOTELS GROUP LIMITED & ANR. Appellants
Through: Mr. Amar Dave with Mr. Kartik
Bhatnagar and Ms. Devina Sehgal, Advocates.

versus

**CONVENTION HOTELS (I) PVT. LTD.
& ANR.** Respondents
Through: Mr. Neeraj Sharma with Mr. Alok
Tiwari, Mr. Anand Raja and Ms. M. Sukla,
Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

06.02.2015

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1. Learned counsel for the Appellants submitted that at this stage the Appellants would be satisfied if the Respondents stands by the statement attributed to them in para 17.5 of the impugned order of the Arbitral Tribunal ('AT') that any sale of the assets in the ordinary course of business of Respondent No.1 would be only for the purposes of fulfilling its financial commitments.

2. The concern of the Appellants is that they should be able to recover the sum, if any, that is awarded in their favour against the Respondents.

3. Learned counsel for the Respondent has raised two objections. The first is to the jurisdiction of this Court to entertain the petition. He points out that the seat of arbitration is Bangalore and Respondent No.1 is also in Bangalore. He points out that the money given by the Appellants to the Respondents was towards subscription of shares and the Share Subscription Agreement ('SSA') containing the arbitration clause does not confer jurisdiction in this Court. It is submitted that the Respondents had reserved their right, in the earlier rounds of litigation, to raise an objection as to jurisdiction.

4. Secondly, it is submitted that the statement attributed to the Respondents in the impugned order of the AT does not required any further elaboration. It is submitted that in the garb of an application under Section 17 of the Arbitration and Conciliation Act, 1996 ('Act') seeking interim reliefs, the Appellants were trying to convert what is essentially an unsecured debt into a secured one and that is why the AT declined the relief prayed for i.e. requiring the Respondent No.1 to furnish security for the claimed amount. It is submitted that the Respondent No.1 maintains that only in order to meet its financial commitments in the regular course of business it will dispose of

its assets and it is always prepared to meet any liability that may arise out of the Award as and when passed. It is pointed out that the Respondents also have counter-claims against the Appellant in the arbitral proceedings.

5. As regards the objection on the ground of jurisdiction, the Court finds that in the earlier rounds of litigation, an order was passed on 11th January 2011 in OMP No. 11/2011 to the effect that if an allotment of the equity shares was made by Respondent No.1 in favour of the Petitioners 1 and 2 in the said petition, it would be without prejudice to the rights and contentions of the Petitioners. Subsequently, on 10th October 2012 an order was passed that it would be open to the parties to seek appropriate interim reliefs before the AT. Subsequently on 1st November 2012 in an application seeking clarification, it was directed that the order passed on 11th January 2011 would continue till such time the AT passed an order in the application filed by either party under Section 17 of the Act. The Court recorded the statement on behalf of the Respondents herein that they should not be taken to have conceded to the jurisdiction of this Court. The Court observed that the issue if and when raised would be decided in appropriate course in accordance with law without reference to the said order.

6. Subsequently, the AT had sittings not only in Bangalore which was the seat of the AT but in other places as well. A detailed order has been passed in an application under Section 17 of the Act filed by the Appellants. In the facts and circumstances, the Court does not consider it as having caused any prejudice to the Respondents that an appeal has been filed against the said interim order of the AT in this Court. With there already having been several rounds of litigations between the parties, the Court declines to entertain the objection as to jurisdiction at this stage.

7. On the merits of the appeal, the Court finds that impugned order of the AT is sufficiently clear and elaborate. It has discussed the aspects of *prima facie* case and balance of convenience vis-a-vis each of the interim reliefs sought by the Appellants. The statement attributed to the Respondents which has been quoted in the impugned order is also unambiguous. The Court finds no need to further add to what the AT has already noted in the impugned order. Consequently, the Court finds no ground to interfere with what is already stated in the impugned order passed by the AT.

8. The appeal is disposed of.



S. MURALIDHAR, J

FEBRUARY 06, 2015/dn