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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 183/2016, IA No.4812/2016 (u/O 39 R-1&2 CPC), IA No.4813/2016 (u/O 38 R-1&5 CPC) & IA No.4814/2016 (u/O XV-A r/w O 39 R-10 CPC)

M/S SANTOSH HOSPITALITY LLP Plaintiff

Through: Mr. Dinesh Garg & Ms. Rachna Agrawal, Advs.

Versus

M/S YSF HOTELS & RESORTS PVT LTD. & ANR..... Defendants

Through: Mr. Sanjay Dua, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.09.2016**

IA No.4815/2015 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. The plaintiff has instituted this suit for ejectment of the defendant no.1, of which defendant no.2 Mr. Rabi Ghosh is the Managing Director, from a motel situated at village Sultan Pur, New Delhi in the tenancy of the defendant no.1 under the plaintiff and for recovery of Rs.8,32,00,000/- towards arrears of rent / damages / *mesne profits* and interest for the period upto the date of filing of the suit and for recovery of future *mesne profits* at the rate of Rs.32,00,000/- per month with interest throughout.
4. Summons of the suit and notice of the applications for interim relief were issued and vide *ex parte* ad-interim order dated 21st April, 2016, the

defendants restrained from transferring possession and / or creating third party rights in the property.

5. The defendants appeared before the Joint Registrar on 20th July, 2016 and sought time to settle. Thereafter again on 1st September, 2016, it was stated that the parties were negotiating settlement.

6. No written statement has been filed by the defendants till now.

7. The counsel for the plaintiff and the counsel for the defendants state that the parties have compromised all their disputes and differences subject matter of the present suit and the suit be decreed in terms whereof.

8. It is stated i) that the defendants agree to a decree for possession / ejectment being passed but being made inexecutable till 31st March, 2017 subject to the defendants complying with the other terms; ii) that the defendants agree to a decree for recovery of Rs.9,59,74,022/- being passed in favour of the plaintiff and against the defendants jointly and severally towards arrears of rent / *mesne profits* together with interest thereon till 30th September, 2016 with interest at 9% per annum with effect from 1st October, 2016 till the date of payment but the same be made inexecutable for a period of one month and subject to the defendants paying the amount of Rs.8,42,47,860/- to the plaintiffs within one month along with service tax and electricity charges, the said decree shall stand satisfied; iii) that the defendants, with effect from 1st October, 2016 till the month of vacation of the premises shall continue to pay to the plaintiff a sum of Rs.26,50,000/- in advance for each month by the 15th day of the month; iv) that the defendants before vacating the premises shall clear all electricity and water charges

with respect to the property; v) that upon the payments as agreed being made, the plaintiff shall unconditionally withdraw the proceedings under Section 138 of the Negotiable Instruments Act, 1881 instituted against the defendants and other Directors of the defendant no.1; vi) that upon the defendants delivering possession of the property as agreed and clearing all dues with respect to the property, the plaintiff at the time of receiving vacant, peaceful, physical possession of the property shall refund the interest free security deposit of Rs.1,44,00,000/- given by the defendants at the time of inception of the tenancy.

9. The aforesaid compromise is found to be lawful and is allowed.

10. A decree is passed in favour of the plaintiffs and against the defendants jointly and severally:

- i) for ejectment of the defendants from the motel situated at village Sultanpur, New Delhi comprising of basement, ground floor and first floor, admeasuring approximately 25000 sq. ft. built up area on land admeasuring 2 acres falling under Khasra Nos.43 min, 46 min, 47 min and 48 min of village Sultanpur, New Delhi as shown in the site plan filed by the plaintiff and on which today Exhibit-C1 is put;
- ii) for recovery of Rs.9,59,74,022/- with service tax together with interest @9% per annum from 1st October, 2016 till payments;
- iii) for future *mesne profits* at the rate of Rs.26,50,000/- per month with effect from 1st October, 2016 till the month of vacation;
- iv) however the decree for ejectment is made inexecutable till 31st March, 2017 subject to the defendants paying to the plaintiff the decretal

amount as mentioned here, on or before 8th October, 2016 and subject to the defendants with effect from 1st October, 2016 continuing to pay a sum of Rs.26,50,000/- to the plaintiff month by month in advance for each month by the 15th day of the month till the month of vacation of the premises;

- v) the decree for recovery of money is also made inexecutable till 8th October, 2016 and it is further decreed, that in the event of the amount of Rs.8,42,47,860/- being paid on or before 8th October, 2016, the decree for recovery of Rs.9,59,74,022/- with interest shall stand satisfied.

11. The undertaking of the defendant no.2 personally present in Court and identified by the counsels, to handover vacant, peaceful, physical possession of the property to the plaintiff on or before 31st March, 2017 and in the event of any of the defaults aforesaid immediately and to not part with possession of the said property or any part thereof and not to cause any damage to the property and to pay all electricity and water charges with respect to the property till the date of vacation is accepted and the defendant no.2 is ordered to be bound thereby and has been explained the consequences of breach of undertaking given to the Court;

12. The parties are left to bear their own costs;

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 08, 2016

‘gsr’..

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