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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) (COMM.) 259/2016 & I.A. Nos. 8232/2016, 10848/2016

INDIAN TOURISM DEVELOPMENT CORPORATION LTD.
(UNIT: ASHOK TRAVELS AND TOURS) Petitioner

Through: Ms. Shweta Bharti with Mr J.K.
Chaudhary, Mr. Vineet Dwivedi and Ms. Swet
Shikha, Advocates.

versus

HERMES I TICKETS PRIVATE LIMITED Respondent

Through: Mr. Anil K. Kher, Senior Advocate with
Ms. Harsha and Mr. D.R. Bhatia, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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10.11.2016

1. The directions issued by the Court by its order dated 21st October 2016 have been carried out in terms of the order dated 3rd November 2016 passed by the Registrar (Original).
2. The report dated 7th November 2016 has been submitted by the System Analyst of the Computer Branch of this Court. A copy of the report will be made available by learned counsel for the parties, within one week from today, by the Registry upon payment of usual charges.
3. Learned counsel for the Petitioner at this stage repeats the prayer made in the petition that the Petitioner should be permitted to use the source code of the online portal 'www.itdctravels.com' that has been furnished by the

Respondent in two compact discs and placed in a sealed cover.

4. The above prayer is vehemently opposed by Mr. Kapil Kher, learned Senior counsel appearing for the Respondent by pointing out in terms of the agreement entered into between the parties in the event of its termination, neither party would be able to use the source code.

5. It appears to the Court at this stage that it is not necessary to determine the above issue. In the event of the Petitioner filing an application before the learned Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996 for interim measures, including the prayer made before this Court regarding permission to use the source code submitted by the Respondent, the learned Arbitrator will decide such application in accordance with law. This will include but not be limited to deciding whether at all the Petitioner should be permitted to use such source code, subject to such conditions as the learned Arbitrator may deem appropriate. If such an application is made within a period of ten days from today, the learned Arbitrator will decide it within a period of two months thereafter. It is however clarified that this Court has not expressed any opinion one way or other way on the merits of the above prayers. It is entirely upto the learned Arbitrator to decide such issue. Further the right of the parties to seek other interim reliefs and to urge all contentions in accordance with law is reserved.

6. The Respondent is bound by the undertaking already recorded in the order dated 1st August 2016 that the Respondent will not use/change the source code.

7. Learned counsel for the parties make a joint request to the Court for the appointment of a sole Arbitrator to adjudicate the disputes between the parties.

8. The Court, accordingly, proposes that Mr. C.L.M. Reddy, former Deputy Director General, National Informatics Centre, (Mobile No. 9810132926), residing at B-24, Tarang Apartments 19, I.P. Extension, Delhi – 110 092, be appointed as sole Arbitrator to adjudicate the disputes between the parties including their claims and counter-claims. The arbitration shall take place under the aegis of the Delhi International Arbitration Centre ('DAC').

9. In the first instance the proposed Arbitrator will make a disclosure to the DAC in terms of Section 11 (8) read with Section 12 (1) of the Act and thereafter enter upon reference. The DAC will provide to the parties copies of the said disclosure. In the event the disclosure is not made within a reasonable time or such disclosure discloses the inability of the proposed Arbitrator to act as such, it will be open to the parties to apply to this Court for directions.

10. Subject to compliance with the above direction, Mr. Reddy will act as Arbitrator and enter upon reference. The fees of the learned Arbitrator will be in terms of the Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules.

11. The two CDs deposited with the Court will be handed over to and kept in the custody of the Additional Coordinator DAC and shall subject to the orders that may be passed by the learned Arbitrator. The report of the

System Analyst also be also sent to the DAC and will in turn be placed before the Arbitrator.

12. The petition and the pending applications are disposed of. A copy of this order be communicated to Mr. C.L.M Reddy as well as the Additional Coordinator, DAC forthwith.

S. MURALIDHAR, J

NOVEMBER 10, 2016

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