

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

Order delivered on : 6th April, 2016

+ **Arb. P. No.691/2015**

HAYWOOD HOSPITALITY (INDIA) PRIVATE LIMITED (FORMERLY
KNOWN AS JHM INTERSTATE (INDIA) PRIVATE LIMITED)

..... Petitioner

Through Ms.Ila Kapoor, Adv. with
Ms.Ananya Aggarwal, Adv.

versus

RAJASTHALI RESORTS AND STUDIOS LTD. Respondent

Through Mr.Ankit R. Kothari, Adv. with
Mr.Ajay Choudhary, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") for the appointment of Sole Arbitrator for adjudication of disputes having arisen between the parties out of or in context of the Hotel Management Agreement ("the Agreement") dated 10th March, 2010.

2. Pursuant to the Agreement, the petitioner was engaged as the sole operator by the respondent for the management of the Rajasthali Resort and Spa, Jaipur.

3. The Agreement had an initial term of 10 years ("Operating Term") unless terminated earlier in accordance with the provisions of the Agreement. It was further extendable up to four additional term of five years each.

4. The Operating Term was to commence on the date when the Hotel was opened for business to the public which was agreed between the parties to be 1st June, 2010("Opening Date"). As per Article 3.1 of the Agreement, the petitioner was required to perform certain pre-opening activities immediately upon entering into the Agreement on 10th March, 2010 ("Commencement Date") who was entitled for consideration for these pre-opening activities and hence, raised an invoice for a total amount of Rs.26,47,200/- for the work done during pre-opening stage.

5. It is stated by the petitioner that the respondent had out of total amount of Rs. 26,47,200/- paid only Rs. 16,76,560/- thus, leaving a balance of Rs. 9,70,640/- unpaid. It is also stated that the respondent had also breached its obligations to open Operations Account and FF & E Reserve Account as per Article 7.3 and Article 7.4 of the Agreement respectively and give exclusive control of these accounts to the petitioner.

6. As per Article 3 .3 of the Agreement, the petitioner shall have full control over the operation, management and supervision of the respondent which was denied to it time and again by the respondent. The petitioner was also entitled to Management Fees in accordance with Article 9 of the Agreement, which the respondent had failed to pay despite repeated reminders.

7. The petitioner alleged that despite of respondent's repeated failure to act as per the terms of the Agreement, the petitioner sent a legal notice dated 2nd May, 2014 calling upon the respondent to pay an outstanding amount of Rs.1,47,16,159/- as on 31st March, 2014 towards various heads within 30 days along with interest @ 18% per annum from the date of receipt of legal notice. But despite

the receipt of the legal notice, the respondent failed to clear outstanding dues within stipulated time.

8. The petitioner as per agreement exercised its right under Article 17.2 of the Agreement and terminated the Agreement by a termination notice dated 12th June, 2014. After the termination, the respondent replied to the legal notice as well as to the termination notice on 12th June, 2014 and 16th June, 2014 respectively.

9. The procedure agreed between the parties as per Article 23.11 for the appointment of arbitrator has failed. Thus, the present petition has been filed.

10. As, the parties failed to settle their disputes amicably, the petitioner issued a notice for invoking arbitration on 26th August, 2015. The said notice was received by the respondent on 1st September, 2015. However, neither any reply has been received by the petitioner to the said Notice nor any amount has been released till date.

11. The prayer for appointment of sole Arbitrator is opposed by the respondent mainly on the following grounds:

- i) The Petitioner Haywood Hospitality (India) Private Ltd. is neither a party to the agreement nor the respondent has any a relation with the petitioner recognized by law. Under section 2 (h) of the Act the "party" means a party to an arbitration agreement. As the agreement dated 10th March, 2010 was executed between the petitioner and M/s JHM Interstate Hotels (India) Pvt. Ltd., a private limited company the arbitration clause under the said agreement binds only

the petitioner and said M/s JHM Interstate Hotels (India) Pvt. Ltd. and no other person. It is only the party to the agreement which can seek enforcement of any terms of the agreement and no other person is entitled to enforce the terms of agreement which has not been agreed between them.

ii) The present arbitration petition is not maintainable being barred by territorial jurisdiction. The subject matter i.e. the Hotel Management Agreement ("the Agreement") was not executed within the territorial jurisdiction of this Court, also no part of entire transaction between the parties took place within the territorial jurisdiction of this Court and the respondent's hotel for which the petitioner was engaged to provide its services in terms of the Agreement, is situated on National Highway 8 (near Shiv Vilas) near Jaipur, Rajasthan and thus, does not fall within the territorial jurisdiction of this Court.

iii) The petitioner has filed the present petition merely on the ground that the venue for arbitration shall be New Delhi. The petition ought to have been instituted before the Court within the local limits of whose jurisdiction the respondent actually and voluntarily resides, or carries on business, or personally works for gain. In the present case, the respondent actually and personally work for gain and carries on business at address mentioned above; hence the present petition is not maintainable.

12. The respondent has mainly raised two preliminary objections in its reply. The first objection raised by the respondent is that there is no privity of contract between the petitioner and respondent. It is alleged by the respondent that the petitioner is not a party to the Agreement as the Agreement was between the respondent and JHM Interstate (India) Pvt. Ltd. ("JHM") and not Haywood Hospitality (India) Pvt. Ltd.

13. As per the petitioner, JHM was established by JHM Hotels LLC, USA, in conjunction with M/s Inter State Hotels, USA as a joint venture. This collaboration ended when M/s. Inter State Hotels exited from its business in India. It sought the approval from the Office of the Registrar of Companies, Gujarat, Dadra and Nagar Haveli for change of name of the company, and the same was granted to the petitioner. The Certificate of Incorporation pursuant to change of name of the company has been placed on record. It also appears from the record that an Extra Ordinary Meeting was held on 25th May, 2015 at the registered office of the petitioner, where the name of the petitioner was changed from JHM Interstate Hotels (India) Pvt. Ltd. to Haywood Hospitality (India) Pvt. Ltd. Copy of extracts of Minutes of the Extra Ordinary Meeting of the Members of JHM Interstate (India) Private Ltd held on 25th May, 2015 has been placed on record.

14. The law is well settled that a change of name of a company does not affect its right and obligations. Clause 23.5 of the Agreement provides that 'This Agreement shall be binding upon and inure to the benefit of Owner and Operator and their respective successors and permitted assigns.' In view of the above, the first argument of the respondent that the petition is not maintainable as

it is not filed by the party to the Agreement is baseless and rejected at this stage.

15. The respondent's second objection that this Court does not have jurisdiction to entertain this petition as the Agreement was not executed within the territorial jurisdiction of this Court. The respondent has raised objection that this Court has no jurisdiction as no part of the entire transaction took place within its territorial jurisdiction.

16. As per Clause 23.11.A it is evident that the venue for the arbitration is New Delhi. The relevant portion of the said Clause is reproduced herein below:

"Any dispute or difference arising between Owner and Operator and arising out of or in relation to this Agreement including regarding the construction, meaning or effect or obligation of the parties hereto under this Agreement or any clause thereof or matter or thing contained or as to the rights and liabilities of the parties hereto shall be referred to arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996, or any statutory modifications or re-enactment for the time being in force. The reference shall be to a single arbitrator if the parties agree upon one, otherwise the reference shall be to three arbitrators, with Owner appointing one arbitrator, Operator appointing the second arbitrator and both such appointed arbitrators appointing the third arbitrator. The arbitrators shall have summary powers and powers to issue interim and ad-interim awards and directions. The existence of any dispute, difference or claim shall not relieve either party of its respective obligations under this Agreement. Further the Agreement shall remain in full force and effect pending the award in such arbitration proceedings and till such time as award is upheld determining whether and when termination shall become effective by a final court of appeal. The venue of the arbitration shall be

New Delhi, India and all legal proceedings shall be conducted in English. The award shall be final and binding on Owner and Operator." (Emphasis Added)

17. The respondent has not denied that the arbitration is to be held in New Delhi. As the arbitration is to be held within the jurisdiction of this Court therefore this Court would also have supervisory jurisdiction and the power to appoint an Arbitrator under Section 11 of the Act.

18. The Supreme Court in the case of ***Bharat Aluminium Company v. Kaiser Aluminium Technical Services*** (2012) 9 SCC 552, while interpreting Section 2(1)(e) of the Act, has in para 96 held that "the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the courts would have jurisdiction, i.e., the court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution i.e. arbitration is located".

19. Subsequently while dealing with the decision of Supreme Court in **Balco** (supra) the Division Bench of this Court had decided a similar question in ***Ion Exchange (India) Ltd. v. Panasonic Electric Works Co. Ltd.*** (2014) 208 DLT 597, that "*whether this court would have territorial jurisdiction to hear the present petition under Section 9 of the said Act when neither the respondents reside in Delhi nor has any part of the cause of action arisen in Delhi, but*

the arbitration clause provide that the arbitration proceedings shall be held in New Delhi? In other words, is the agreed seat or place of arbitration alone sufficient to confer territorial jurisdiction on the courts of that place?" The Court answered this question in the positive and held that the courts at the seat or place of arbitration would have jurisdiction to entertain an application under the Act, irrespective of the fact that the cause of action arose elsewhere and/or respondent resides elsewhere.

20. In view of the settled position of law, it is clear that this Court has the jurisdiction to entertain this petition as Clause 23.11 A of the Agreement provides that the arbitration is to be held in New Delhi, which fact has not been disputed by the respondent. Still, the respondent is always at liberty to raise both the objections in the arbitration proceedings, the same would be considered as per its own merit and without any influence of my order.

21. Under these circumstances, the prayer of the present petition is allowed. Accordingly, Mr. Justice S.N.Dhingra, Retired Judge of this Court is appointed as sole Arbitrator to adjudicate the disputes arising between the parties. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator. The Arbitrator shall ensure the compliance of the provisions of the Arbitration & Conciliation Act, (Amendment Act) 2015. The fees of the learned Arbitrator shall be paid as per schedule of the Amended Act.

22. The petition is accordingly disposed of.

23. Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be delivered to the learned Arbitrator forthwith.

(MANMOHAN SINGH)
JUDGE

APRIL 06, 2016

