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

+ **FAO 48/2017 and C.M. No.3352/2017 (stay)**

MY FUN TRIP PRIVATE LIMITED Appellant

Through: **Mr. Sunil Kumar, Advocate.**

versus

INDUSIND BANK LTD Respondent

Through: **Mr. Amit Bajaj, Advocate with Mr.
Puneet Bajaj, Advocate.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **18.05.2017**

1. With consent, the impugned order dated 28.9.2016 is set aside and it is agreed that the court below will hear and dispose of the petition filed under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') by the respondent herein on merits. In law once an *ex parte* order is obtained by a petitioner in a petition under Section 9 of the Act thereafter there cannot be simplicitor withdrawal of such a petition unless the interim order is vacated and restitution takes place to the person against whom interim order has been passed and acted upon vide ***DTC Vs. International Avenues 161 (2009) DLT 16.***

2. In view of the above, this appeal is allowed with consent and the court below is directed to hear and dispose of the Section 9 petition filed by the respondent in accordance with law. Of course respondent herein can withdraw the petition under Section 9 of the Act provided the order of receiver is vacated and the possession of the vehicle which has been taken over by the respondent is handed over to the appellant in the same condition in which it was when the possession was taken by the receiver pursuant to the interim order obtained by the respondent from the court below.

3. Parties to appear before the District & Sessions Judge (New Delhi), Patiala House Courts, New Delhi on 7th June, 2017, and the District & Sessions Judge will mark the petition under Section 9 of the Act for disposal to a competent court in accordance with law.

VALMIKI J. MEHTA, J

MAY 18, 2017

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