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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 431/2017

HOTEL HIGHWAY PALACE

..... Petitioner

Through : Dr.M.P.Raju and Mr.James
P.Thomas, Advs.

versus

INDIAN RAILWAY CATERING AND TOURISM

CORPORATION, & ANR.

..... Respondent

Through : Mr.Sunil Satyarthi, Adv.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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13.11.2017

This application is under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator. On 10.03.2005 the petitioner had entered into an agreement with the respondent and had invested huge amounts for the project especially for construction and was given a right to run the hotel. The policy of the respondent clearly states that in case major construction is effected by a party the normal period of license shall be 12 + 3 years but inadvertently it was mentioned as 9+3 years which fact the petitioner has challenged through a letter dated 27.04.2005 to respondent for correcting their mistake but was not responded by the respondent. The petitioner then filed a Writ Petition No.11977 /2016 before High Court of Kerala for directing the respondent to increase the contract period from 9+3 years to 12+3 years but it was dismissed. An LPA against the order of dismissal was filed

but it was also dismissed. It is alleged the period of the agreement dated 10.03.2005 since had ended in September, 2016 so the respondent terminated the agreement. Against this termination the petitioner went to the Kerala High Court vide writ petition No.32219/2016 wherein the following plea was raised by the respondent :-

5. Respondents have also filed an affidavit producing Ext. R4(F), the general Conditions of contract, wherein as per Clause 19.1 any dispute or difference arising under conditions of license or in connection with the license, shall be resolved by arbitration as per the Arbitration and Conciliation Act, 1996. Therefore, it is contended that if at all there is any objection for the petitioner, same will have to be resolved by resorting to the said provision.

The Court while disposing of the said writ held as follows :

...In that view of the matter, and taking note of the law laid down by the Apex Court in the aforesaid judgment, vis-a-vis Clause 19.1 of Ext.R4(F), it is clear, if at all the petitioner is aggrieved petitioner is to resort to the remedies provided for resolution of the dispute by resorting to the Arbitration and Conciliation Act, 1996.

Resultantly, the writ petition fails and accordingly it is dismissed. However, petitioner is given a week's time to remove the articles kept in the premises from the date of receipt of a copy of this judgment. If the petitioner makes any application before the respondents requesting so, the petitioner shall be permitted to remove the same under the supervision of the Railway officials.

Hence a notice dated 27.03.2017 was issued by the petitioner requesting the respondent to refer the matter to an arbitrator but it was declined on 01.05.2017. Learned counsel for the respondent has now taken a plea that since agreement was dated 10.03.2005 and since it was terminated in September, 2016, this petition as also the claim of the petitioner are barred by limitation.

Considering that the agreement was only terminated in September, 2016 and also the termination when challenged by the petitioner before the writ court this objection was never taken by the respondent hence cannot now plead for the same. Even contract was terminated in 2017. It is also submitted by learned counsel for the petitioner that in case the termination is held illegal the petitioner would then be entitled to damages which can be determined only by learned arbitrator.

In view of the submissions made, it would be appropriate if the plea to termination, legal or illegal be decided by the learned arbitrator and hence Mr.Mukul Gupta, Senior Advocate (Mobile No.9810135004) is appointed as the Arbitrator to adjudicate the disputes. His fee shall be fixed as per the fee schedule of DHCA Centre.

The petition is disposed of.

YOGESH KHANNA, J

NOVEMBER 13, 2017
VLD