

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ OMP (COMM) NO. 465/2016

Reserved on: 24th November, 2017
Date of decision: 07th December, 2017

SIESTA HOSPITALITY SERVICES LTD. Petitioner
Through: Ms.Awantika Manohar,
Mr.Dhawesh Pahuja, Advs.

versus

SPICEJET LTD. Respondent
Through: Mr.Samrat Nigam,
Mr.Abhimanyu Wali, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner Siesta Hospitality Services Ltd. challenging the Arbitral Award dated 06.12.2014 passed by the Sole Arbitrator dismissing the claim filed by the petitioner holding as under :-

“The Prayer of the Claimant to declare that the action of the Respondent in terminating the Agreement on 13.10.2008 was illegal, arbitrary and contrary to the provisions of the Agreement dated 14.02.2008 cannot be sustained as the relationship between the parties in regard to the properties at Powai and Malad was not governed by the Agreement (Exhibit C-2). It was governed by the e-mails dated 02.11.2007 and 06.11.2007 which clearly indicate that relationship was on temporary basis and could be terminated any time. The termination procedure as laid down in the

Agreement dated 13.02.2008 was not incorporated in the e-mails. Therefore, the Claimant is not entitled to the declaration also as prayed”.

2. The learned counsel for the petitioner submits that the Award is vitiated by patent illegality appearing on the face of the same in as much as the Arbitrator has not only failed to consider “Annexure-I” to the Service Agreement dated 14.02.2008 executed between the parties to the present petition, but also the reply dated 17.12.2008 sent by counsel for the respondent to the legal notice dated 10.11.2008 of the petitioner and the letter dated 18.02.2010 of the counsel for the respondent agreeing to the amendment of the Arbitration Clause contained in the Service Agreement and agreeing to the appointment of the Sole Arbitrator.

3. It is submitted that the Arbitrator, himself being appointed under the Service Agreement could not have concluded that the Service Agreement itself is inapplicable to the disputes between the parties. The learned counsel for the petitioner has further drawn my attention to the reply to the statement of claim filed by the respondent herein to contend that even in the reply, the plea taken was not that the Service Agreement is not applicable to the claim of the petitioner, but that the Service Agreement was void for uncertainty.

4. On the other hand, the learned counsel for the respondent submits that the Sole Arbitrator having construed the terms of the agreement and having concluded that the same is not applicable to the two properties in question, this Court cannot substitute such finding while exercising its jurisdiction under Section 34 of the Act.

5. I have considered the submissions made by the parties. The learned Arbitrator has placed reliance on the e-mails dated 02.11.2007 and 06.11.2007 to conclude that the properties in disputes would be governed by these e-mails and not by the Service Agreement. E-mail dated 02.11.2007 suggests that a “Master Service Agreement” was attached thereto. This e-mail was in relation to the property at Malad. There is another e-mail dated 06.11.2007 from the petitioner to the respondent which states that the parties would be entering into a “Pan India Tie Up”. E-mail dated 15.11.2007 from the respondent to the petitioner speaks of premises at Mumbai, Ahmedabad, Kolkata and Chennai. There are other e-mails also exchanged between the parties. These e-mails pre-date the Service Agreement dated 14.02.2008. Clearly, the parties were negotiating for hiring of corporate residence facility by the respondent from the petitioner in various cities and this eventually culminated into the ‘Service Agreement’ dated 14.02.2008. A few terms of the Service Agreement, relevant for the purpose of present adjudication, are reproduced herein:-

“RECITALS

SpiceJet requires Corporate Residence’s facility at Bangalore/ Mumbai/ Chennai/ Gurgaon/ Delhi and other locations in India. The Supplier has agreed to provide such Corporate Residence facility on the terms and conditions as mentioned in the Agreement.

xxxxxx

(XIV) Dispute Resolution

This Contract shall be governed by the laws of India. All disputes arising out of, in connection with or in relation to this Agreement shall in the first instance be

settled through mutual discussions between the Parties. Failing resolution of such disputes within a period of 15 days from the first written notice of dispute from either Party, all such disputes shall be referred for Arbitration which shall be governed under the Arbitration and conciliation Act, 1996. Each party shall appoint one person as its Arbitrator and the two Arbitrators so appointed shall appoint a third Arbitrator. The seat of Arbitration will be New Delhi and the language shall be English. The Parties agree to submit to the exclusive jurisdiction of the Courts located in Delhi, India as regards any disputes, claims or matters arising under or in relation to this Agreement.

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Annexure I

Details or Corporate Residence

LOCATION : MUMBAI

ADDRESS OF THE PREMISES

- 1. Flat No. 102, Quiscent Heights, Mind Space, Malad (W), Mumbai-4 rooms.*
- 2. Flat No(s) 201, 204, 205, 206, Panchsmruti Apartments, Andheri (E), Mumbai aggregating upto 7 rooms”.*

6. Perusal of the above clause would suggest that the Service Agreement was executed to formalize the “Pan India” relationship between the parties including the properties at Powai and Malad, which were the subject-matter of dispute between the parties before the Sole Arbitrator. The above quoted Annexure-1 of the agreement has not been adverted to by the Arbitrator. The learned counsel for the respondent could not deny that the two

properties mentioned in the Annexure-1 quoted above are the properties at Malad and Powai, that were the subject matter of the claim before the Arbitrator.

7. The Arbitrator has further not referred to the reply dated 17.12.2008 to the legal notice sent by the respondent to the petitioner. In the reply repeated reference was made to the Service Agreement dated 14.02.2008 to deny the claim of the petitioner. Clearly the respondent itself was of the view that the Service Agreement is governing the relationship between the parties with respect to the properties in question.

8. As noted above, the Service Agreement provided for Arbitration before the Arbitral Tribunal consisting of three arbitrators. This was mutually amended to a Sole Arbitrator when the claimant raised the disputes with respect to the above two properties and sought for reference of the same to arbitration. Such change was made without any reservation to the effect that the Service Agreement would not apply to the dispute raised by the petitioner. The effect of the above correspondence has again not been adverted to by the learned Arbitrator.

9. In view of the above, the submissions of the learned counsel for the respondent that the Arbitrator has merely interpreted the agreement between the parties and such interpretation cannot be interfered with by this court in exercise of its jurisdiction under Section 34 of the Act, cannot be accepted. The Arbitrator has, in my opinion, ignored vital evidence that was led before him. This was not a question of interpretation but of giving effect to the documents and evidence that had been led before the Arbitrator. It is not as if the Arbitrator after discussing these documents has come to a conclusion

as, if that was the case, this Court, may not have interfered with such finding. As the Arbitrator has completely failed to consider these documents, this Court finds that the Arbitral Award is liable to be set aside.

10. The submissions of the respondent that the above finding would have no effect on the final conclusion of the Sole Arbitrator as the Arbitrator has also held that the petitioner/claimant had not filed any statement of account in support of its claim and therefore, the Award can be sustained on this ground alone, also cannot be accepted. Reading of the Award clearly shows that, having come to the conclusion that the Service Agreement dated 14.02.2008 had no application to the claim of the petitioner/claimant, the learned Arbitrator proceeded on the basis that terms of this agreement need not be considered by him. I have already held that the Service Agreement would be applicable to the disputes between the parties, therefore, what would be the effect of the terms thereof had to be considered by the learned Arbitrator. As he has not considered the same, the Award cannot be sustained.

11. In view of the above, the impugned Award dated 06.12.2014 passed by the Sole Arbitrator is set aside.

12. The present petition is allowed with no order as to costs.

NAVIN CHAWLA, J

DECEMBER 07, 2017/rv