

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2018

CORAM

THE HONOURABLE Mrs.Justice PUSHPA SATHYANARAYANA

O.P. No.620 of 2016

Schindler India Private Ltd.
Represented by its Assistant Legal Manager,
Mr.Sunil Khajjidoni
Seshans Complex,
No.140, Anna Salai,
Saidapet, Chennai 600 015 .. Petitioner

-vs-

1. Urban Edge Hotels Pvt.Ltd
Represented by its Director,
No.9, CIT Colony, 1st Main Road,
Mylapore, Chennai 600 004.
 2. Urban Edge Hotels and Holdings Pvt.Ltd
No.129, Estate Main Road,
Industrial Estate,
Perungudi,
Chennai 600 096 .. Respondents
- [Amended as per order dated 16.12.2016 in
O.P.No.670 of 2016]

Prayer: Petition filed under Order XIV Rule VIII of O.S.Rules r/w
Section 11(4) of the Arbitration and Conciliation Act, 1996 to appoint
an Arbitrator for the settlement of the disputes between the petitioner
and the respondents.

For Petitioner : Mr.S.P.Chockalingam

For Respondent-1: Mr.K.Senthilkumar

For Respondent-2: Mr.C.P.G.Yoganand

ORDER

Both the parties have entered into a Memorandum of Understanding dated 23.03.2018. The signatories to the document Mr.K.Devaraj, Deputy General Manager, who holds the General Power of Attorney dated 06.03.2018 on behalf of the petitioner-Schindler India Private Ltd and Mr.Uddaykumar Krishnan, the Authorised Signatory on behalf of the respondents 1 and 2 are present before this Court today and they have admitted the signatures found in the Memorandum of Understanding. The terms of Memorandum of Understanding are as follows:

- 1. Earlier, on 14th October, 2010 the Parties of the Second Part have entered into an Agreement with the Party of the First Part for the supply, installation and commissioning of elevator at Ahmedabad & Chandigarh. Accordingly, the Party of the First Part had supplied the equipment, necessary material and installed elevator to the satisfaction of the Parties of the Second part.*
- 2. In the said regard the Parties of the Second Part have paid a sum of Rs.2,11,46,282/- (Rupees Two Crore Eleven Lac Forty Six Thousand Two Hundred Eighty Two only) against Rs.2,20,70,209/- (Rupees Two Crore Twenty Lac Seventy Thousand Two Hundred Nine only) towards Agreements dated 14th October 2010 and that Rs.9,23,656/- (Rupees Nine Lacs Twenty Three Thousand Six Hundred Fifty Six only) was outstanding against as under:*
Urbanedge Hotels Private Limited : Rs.4,84,926/-

*Urbanedge Hotels and
Holdings Private Limited*

: Rs.4,38,730/-

3. Pursuant thereto, the parties hereto have entered into a Memorandum of Understanding on 06.03.2014. In the memorandum it was agreed between the parties, inter alia, that the parties of the Second part will clear the outstanding dues in four instalments and that the Party of the First Part should recommence the work. Further, through the said Memorandum of Understanding it was agreed between the parties that if the Memorandum of Understanding (MOU) is inconsistent with any terms or conditions of the original contract, the terms of MOU will prevail. Nevertheless, no terms and conditions of original contract shall be negated or changed as a result of the MOU, and in the absence of any specific admission in the MOU the terms and conditions of original agreement will prevail. One of the conditions in the original agreement is that if there arises any dispute between the parties, the same shall be decided by arbitration and in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the venue for the Arbitration will be at Chennai.

4. As per the terms of MOU the parties of the Second Part had paid two installments and failed in its commitment to pay balance sum of Rs.9,23,924/- (Rupees Nine Lakhs Twenty Three Thousand Nine Hundred and Twenty Four only) to the party of the First Part. Hence the Party of the First Part had invoked the Arbitration Clause and since the Parties of the Second Part have failed to comply to the demands of appointing an Arbitrator, the Party of the First

Part had filed a Petition against the Parties of the Second Part u/s 11(4) of the Arbitration and Conciliation Act, 1996, on the file of the Hon'ble Madras High Court, vide O.P. No.620 of 2016.

5. *While the case was pending the parties hereto have made endeavor to settle the matter amicably and hence the Hon'ble Madras High Court had referred the case for mediation. However, mediation could not fructify and the matter got reverted to the Court for further proceedings. It is at this stage the parties hereto have wished to amicably settle the dispute between themselves by entering into a fresh Memorandum of Understanding on this date and on the following terms and conditions,*

(i)The Parties of the Second Part have jointly paid to the Party of the First Part a sum of Rs.1,53,942.66 (Rupees One Lac Fifty Three Thousand Nine Hundred Forty Two and Sixty Six Paise Only) on 23rd March 2018, vide Cheque No.002126, dated 19/03/2018.

(ii)The Parties of the Second Part will jointly pay the Party of the First Part the balance amount of Rs.7,69,713.34 (Rupees Seven Lac Sixty Nine Thousand Seven Hundred Thirteen and Thirty Four Paise Only) in five monthly instalments and the due of which falls on or before 20th day of every month starting from April, 2018.

(iii)In the event of failure to pay the dues on time the Arbitration Proceeding gets revived and Mr.V.Inbavijayan, Advocate is appointed as an Arbitrator

to adjudicate the dispute between the parties and Arbitration Proceedings will begin forthwith.

(iv) However, on receipt of above mentioned amount of Rs.9,23,656/- (Rupees Nine Lacs Twenty Three Thousand Six Hundred Fifty Six Only) by the Party of the First Part, all claims against the Parties of the Second Part is fully and finally settled. In view of this agreement the party of the first part shall withdraw O.P. 620 of 2016 on 28.3.2018 or on the day case listed again before High Court of Madras.

(v) Further, the Parties of the Second Part confirm that the Party of the First Part had successfully complied with its obligations under Agreement, dated 14th Oct 2010 executed between the parties and as on date no work is pending from its end.

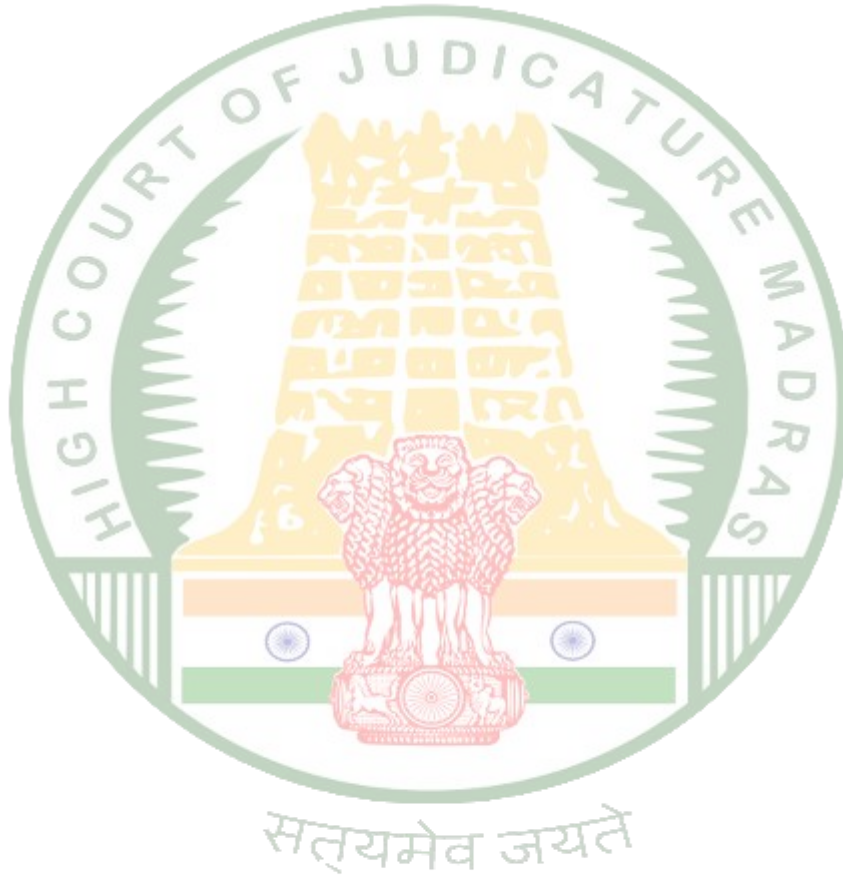
The executants of this Agreement are Mr.K.Devaraj, Deputy General Manager of the Party of the First Part and Mr.Uddaykumar Krishnan, the Authorised Signatory of Urbanedge Hotels Private Limited and Urbanedge Hotels and Holdings Private Limited, the Parties of the Second part.

2. In view of the above said Memorandum of Understanding, the parties themselves have consented for an agreement of appointment of Arbitrator. The same is recorded. The Memorandum of Understanding shall form part and parcel of this order.

3. Accordingly, the Original Petition is disposed of in terms of Memorandum of Understanding. No costs.

13.04.2018

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PUSHPA SATHYANARAYANA,J.

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