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

+ **ARB. A. (COMM.) 9/2018 and IA No. 3002/2018**

FATIMA LOBO & ANR.

..... Appellants

Through: Mr Jayant K. Mehta, Mr Chetan Lokur, Mr Nitish Chaudhary Ms Sajal Jain, Advocates alongwith Petitioner no. 1 in person.

versus

JULIA CARMEN DESA & ORS.

..... Respondents

Through: Mr Viraj Datar, Mr Vineet Jhanji and Mr Imran Moulaey, Advocates.
Mr Sumeher Bajaj and Ms Sonali Chopra, Advocates for M/s Pass Code Hospitality Pvt. Ltd.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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24.05.2018

1. The appellant has filed the present appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, impugning an order dated 15.02.2018 passed by the Arbitral Tribunal under Section 17 of the Act. The appellant is essentially aggrieved by the decision of the Arbitral Tribunal in directing the appellant to pay a sum of ₹3,00,000/- to the respondent on or before seventh day of each month. The said decision is premised on the basis that the appellants had entered into an agreement with M/s Pass Code Hospitality Pvt. Ltd. whereby they had sought to create rights in the immovable property bearing No. flat no. 17, Main Market, Lodhi Road, New Delhi (hereafter 'the said property'). The appellants had been restrained from creating any third party right in respect

of the said property and the Arbitral Tribunal proceeded on the basis that the said order had been violated. This was also compounded by the appellants conduct in reporting that the liquor bottles, which were to be preserved, had been destroyed during renovation and an ornamental fitting (referred to as Corian Wall), which the respondent claimed was very valuable, was also destroyed.

2. M/s Pass Code Hospitality Pvt. Ltd. is represented before this Court and it has been unequivocally stated on its behalf that it has no right, title or interest in the said property and further, it will also not claim any such right. The learned counsel for Pass Code Hospitality Pvt. Ltd. further states that the said company would abide by the decision of the Arbitral Tribunal.

3. It is also stated on behalf of the appellants that they shall not create any right or interest in the said property. It is further stated that the restaurant is being run solely by them under the franchise arrangement, which provides no right in respect of the restaurant to the franchisor and, therefore, the use of the premises for a restaurant (known as “Jamun”) is, in fact, the user by the appellants alone.

4. While the present proceedings were pending, the appellants have deposited a sum of ₹12 lacs with the Registry of this Court. This Court is of the view that the interest of the respondent in regard to the damage to the liquor and the Corian Wall are secured by the said deposit.

5. In view of the statement that no rights have been created in the property in question, the direction to make further deposit is no longer necessary. The impugned order is set aside. However, it is clarified that the

amount deposited by the appellant shall continue to be retained by the Registry in an interest bearing account and the same will be disbursed subject to the final outcome of the arbitral proceedings.

6. It is clarified that this Court has not expressed any opinion on the merits of the disputes between the parties.

7. The appeal and the application are disposed of.

VIBHU BAKHRU, J

MAY 24, 2018
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