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

\+ ARB.P. 180/2018

ZOSTEL HOSPITALITY PRIVATE LIMITED ..... Petitioner

Through Mr. Amit K. Mishra alongwith Mr.Akshat Hansaria, Advs.

versus

ORAVEL STAYS PRIVATE LIMITED ..... Respondent

Through Mr. Sandeep Grover, Mr. Mohit Chadha, Ms. Vara Gaur and Ms. Vaishnavi Raj, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

O R D E R

% **14.05.2018**

This petition under Section 11 of the Arbitration and Conciliation Act, 1966 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking an appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to Term Sheet dated 26th November, 2015. The Term Sheet has been executed between the petitioner and the respondent as also by a corporate entity in the name and style of "Internet Fund III Pte, Ltd." (herein under referred to as "Internet Fund").

Admittedly, Internet Fund is a company incorporated in Singapore.

Learned counsel for the Respondent, based on above facts submits that the present petition would be a case of 'International Commercial Arbitration' as defined in Section 2 (1) (f) of the Act and therefore, in terms of Section 11 (9) of the Act, this court will not have jurisdiction to entertain the present petition.

The learned counsel for the petitioner, on the other hand, submits that Internet Fund has already transferred its entire share holding in the petitioner company and in this regard, he places reliance on the Securities Transfer Forms that is SH-4 Form dated 10th November, 2017. He further submits that in the arbitration proceedings there would be no claim made on behalf of the Internet Fund or any other foreign entity/person and therefore, the present case is one of the Domestic Arbitration and not 'International Commercial Arbitration'.

The learned counsel for the respondent has drawn my attention to the Securities Transfer Forms and submits that various vital particulars have been left blank in the said Forms. He further relying on the same, submits that there is a dispute on whether the shares have been actually transferred by Internet Fund to a third party or not. He submits that whether Internet Fund is a necessary or a proper party to arbitration can be considered by this court only if it first has jurisdiction to entertain this present petition.

Having considered the submissions made by learned counsel for the parties, in my opinion, the objection raised by the respondent has merit. The Term Sheet on the basis of which appointment of an Arbitrator is being sought in the present petition, admittedly has Internet Fund, a foreign corporate entity as a party. Whether it is any longer interested in the adjudication of the disputes or is a necessary or a proper party in resolution of any dispute that has arisen between the petitioner and the respondent, is a question to be determined only after the court first comes to the conclusion that it has jurisdiction over the subject matter of the petition. As one of the parties to the subject matter of the petition is admittedly a foreign corporate entity, in my opinion, this would be a case of the 'International Commercial Arbitration' as defined in Section 2 (1) (f) of the Act and therefore, only the Supreme Court would have the jurisdiction to entertain a petition under Section 11 of the Act.

In view of the above, the present petition is not maintainable before this court and is accordingly dismissed, leaving it open to petitioner to seek proper remedy as may be available in accordance with law.

NAVIN CHAWLA, J

MAY 14, 2018
Pallavi