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

+ **ARB.P. 263/2018**

**GUJARAT JHM HOTELS LTD.,[SUCCESSOR-IN-INTEREST
OF JHM INTERSTATE (INDIA) PRIVATE LTD.]..... Petitioner**

**Through: Mr Tejas Karia, Ms Ila Kapoor, Ms
Ananya Aggarwal and Ms Kiran
Devrani, Advocates.**

versus

**DUET INDIA HOTELS (JAIPUR) PRIVATE
LIMITED**

..... Respondent

**Through: Mr Vijay Kaundal and Mr Nitish K.
Sharma, Advocates.**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.05.2018

IA No. 4754/2018

1. Allowed, subject to all just exceptions.

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2. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), inter alia, praying that the arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the agreement dated 13.07.2009.

The said agreement includes an arbitration clause, which is set out below:-

“23.12 A. Any dispute or difference arising between Owner and Operator and arising out of or in relation to this Agreement including regarding the construction, meaning or effect or obligation of the

parties hereto under this Agreement or any clause thereof or matter or thing herein contained or as to the rights and liabilities of the parties hereto shall be referred to arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996, or any statutory modifications or re-enactment for the time being in force. The reference shall be to a single arbitrator if the parties agree upon one, otherwise the reference shall be to three arbitrators, the Owner appointing one arbitrator, the Operator appointing the second arbitrator and both such appointed arbitrators appointing the third presiding arbitrator. The arbitrators shall have summary powers and powers to issue interim and ad interim awards and directions. The existence of any dispute difference or claim shall not relieve either party of its respective obligations under this Agreement. Further, the Agreement shall remain in full force and effect pending the award in such arbitration proceeding and till such time as award is upheld determining whether and when termination shall become effective by a final court of appeal. The venue for the arbitration shall be New Delhi, India and all legal proceedings shall be conducted in English. The award shall be final and binding on Owner and Operator.”

3. Mr Kaundal learned counsel appearing for the respondent does not dispute the existence of the arbitration clause or that the same had been validly invoked. He, however, states that there is a possibilities for parties to amicably resolve the disputes and the parties be referred to mediation before Delhi High Court Mediation and Conciliation Centre (DHCMCC). He further states that if the parties are unable to resolve their disputes before DHCMCC, they could be referred to arbitration under Delhi International

Arbitration Centre (DIAC).

4. In view of the above and with the consent of the parties, it is directed that a sole arbitrator be appointed by DIAC for resolution of the disputes that have arisen between the parties in connection with the agreement dated 13.07.2009 and falling within the scope of the arbitration clause set out above. The arbitration shall be conducted under the aegis of DIAC and in accordance with its Rules. However, the arbitrator would be appointed only if the parties being unable to resolve the disputes before DHCMCC prior to 01.08.2018. The petitioner has also filed a similar petition for appointment of an arbitrator to adjudicate the disputes arising out of another agreement - agreement dated 30.06.2010 - entered into by the parties (Arb. P. 262/2018). The said petition has also been disposed of by a separate order passed today. It is directed that the same arbitrator, who is appointed to adjudicate those disputes be appointed in this case as well.

5. Let the parties shall appear before DHCMCC on 31.05.2018 at 3:30 PM and endeavour to resolve the disputes amicably.

6. In the event the disputes are resolved within a period of six weeks on or before 30.07.2018, the parties shall communicate the same to the Coordinator, DIAC and no further steps towards arbitration would be required to be taken. However, if the parties are unable to resolve the disputes on or before 30.07.2018, they shall appear before the Co-ordinator, DIAC on 01.08.2018 at 11:00 AM for further proceedings.

7. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

MAY 22, 2018/MK