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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P.(C) 4232/2018 and CM No. 16572/2018**

ROHINI HOTELS (MADRAS) PVT. LTD.
AND ANR. ..... Petitioners

Through: Mr Rajiv Nayyar, Senior Advocate with Mr Amit Mahajan, Mr Ravi Data and Mr Rajesh Sharma, Advocates.

versus

TOURISM FINANCE CORPORATION
OF INDIA ..... Respondent

Through: Ms Pratiti Rungta, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 25.07.2018

1. The petitioners have filed the present petition, *inter alia,* impugning a communication dated 08.01.2018, whereby the respondent (hereafter 'TFCI') has revoked the One Time Settlement (OTS) entered into between the parties. Admittedly, in terms of the letter dated 03.11.2017, the parties had entered into the OTS for settlement of the dues claimed by TFCI from the petitioners. In terms of the OTS, the petitioner was required to pay a sum of ₹8.50 crores towards full and final settlement of the outstanding dues including legal cost. The terms of the OTS – as set out in the letter dated 03.11.2017 – are set out below:-

"a) Cut-off date 15-10-2017.

b) RHPL shall remit Rs.850 lakh towards full and final settlement of the outstanding dues including legal cost as under:

(1) Rs.100 lakh within 10 days of receipt of communication from TFCI (out of which Rs.25 lakh has been received);

(2) Rs.250 lakh on or before 30-11-2017

(3) Rs.250 lakh on or before 31-12-2017 and

(4) Rs.250 lakh on or before 31-01-2018.

c) In case RHPL remits the entire OTS amount within 3 months (i.e. on or before 31-01-2018), no interest would be payable on the crystallized amount from the cut-off date.

d) In case the OTS amount is paid beyond the last instalment date, interest @ 13.50% p.a. shall be charged from the cut-off date on the outstanding amount;

e) In case the entire payment is not received within 6 months from the date of communication, TFCI shall have the option to revoke the settlement and proceed for recovery of entire dues.

f) The OTS proposal shall be filed with DRAT in the form of a consent decree.

g) The case(s) filed by TFCI shall be withdrawn on receipt of full and final settlement."

2. It is apparent from the above, that the parties had agreed that in the event the entire OTS amount was not paid within a period of three months, no interest would be payable on the crystallised amount from the cut-off date. In the event the amount was paid beyond the last date to instalment, the petitioner would be obliged to pay interest at the rate of 13.50% per annum from the cut-off date – which was agreed as 15.10.2017 – on the outstanding amount. The petitioner failed to pay the OTS amount as agreed; it paid only

a part of the amount (₹50,00,000/-) but failed to pay the remaining amount. On 08.01.2018, the respondent issued a letter dated 08.01.2018 (which is impugned in the present petition) revoking the OTS.

3. It is the petitioner's case that the said OTS could not be revoked prior to expiry of six months from 03.11.2017. In terms of the OTS, in the event the entire amount was paid within a period of three months (that is, on or before 31.01.2018), no interest would be payable on the OTS amount. However, interest at the rate of 13.5% p.a would be payable if the payments were delayed beyond the said date. It is contended that the said terms made it clear that in any case, the OTS settlement could not be revoked prior to 31.01.2013.

4. The present petition was listed on 25.04.2018 and on that date, this Court passed an order that no coercive steps would be taken against the petitioner subject to the petitioner paying the entire OTS amount with interest.

5. This Court is informed that the petitioner has discharged the said obligation by paying the entire sum of ₹8.50 crores alongwith interest at the rate of 13.50% from the cut-off date.

6. Ms Rungta, the learned counsel appearing for TFCI states that the said amount was accepted by the respondent without prejudice to its rights and contentions. She contends that since the first installment of Rs. 100 lakhs was not paid, TFCI was not bound by the OTS. She further contends that the a copy of the letter dated 03.11.2017 was to be signed and returned to TFCI. And, since this was not done, the binding OTS had not come into existence.

7. *Prima facie,* the TFCI's stand is not only untenable but also

unreasonable. This is so as a plain reading of the terms of the OTS indicates that it did contemplate payments beyond the period of three months, *albeit* with interest. The contention that a copy of the communication dated 03.11.2017 was not returned and therefore the OTS was not binding is also unsubstantial as there is no dispute that the petitioner had accepted the same and had also acted in pursuance thereof.

8. However, it is not apposite to adjudicate the said disputes in these proceedings. More so as the petitioner has preferred an appeal before the Debt Recovery Appellate Tribunal (DRAT) against an order of the Debt Recovery Tribunal (DRT) issuing a recovery certificate.

9. The learned counsel appearing for the parties also indicate that the parties would like to make efforts for an amicable resolution of the impasse that has now arisen. In view of the above, the parties are directed to appear before the Delhi High Court Mediation and Conciliation Centre on 31.07.2018. In the event the parties are unable to resolve their disputes amicably, it will be open for the petitioner to pursue its appeal (127/2018) before the DRAT. The petitioners shall also file a comprehensive list of their assets before the DRAT. It is further directed that DRAT would consider the appeal without insisting on pre-deposit of any amount.

10. The parties also agree that DRAT would also examine the petitioner's case that it has discharged it entire liability under the OTS entered into between the parties.

11. It is further directed that no coercive steps would be taken against the petitioner till the disposal of the petitioner's appeal before the DRAT.

12. In the event the petitioner is aggrieved by the order of the DRAT, it

would be at liberty to apply.

13. The petition is disposed of with the above terms. The pending application also stands disposed of.

14. Order *dasti.*

VIBHU BAKHRU, J

JULY 25, 2018
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