

\$~13 to 16

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

Date of decision: 31st May, 2018

+ O.M.P.(I) (COMM.) 220/2018
INTERCONTINENTAL HOTELS GROUP (INDIA) PVT. LTD.
(THROUGH: ITS AUTHORIZED SIGNATORY, MR.
VENKATESH GOMATAM) & ANR. Petitioners
Through: Mr.Tejas Karia, Ms.Ananya Aggarwal,
Ms.Shruti Sabharwal, Ms.Surbhi Lal, Advs.

versus

DUET INDIA HOTELS (CHENNAI OMR) PVT. LTD.
..... Respondent
Through: Mr.Dayan Krishnan, Sr. Adv. with
Mr.Vijay, Mr.N.K.Sharma, Ms.Aakash Lodha,
Mr.Sanjeevi Seshadri, Advs.

(14) O.M.P.(I) (COMM.) 221/2018
INTERCONTINENTAL HOTELS GROUP (INDIA) PVT. LTD. &
ANR. Petitioners
Through: Mr.Tejas Karia, Ms.Ananya Aggarwal,
Ms.Shruti Sabharwal, Ms.Surbhi Lal, Advs.

versus

DUET INDIA HOTELS (CHENNAI) PVT. LTD.
..... Respondent
Through: Mr.Dayan Krishnan, Sr. Adv. with
Mr.Vijay, Mr.N.K.Sharma, Ms.Aakash Lodha,
Mr.Sanjeevi Seshadri, Advs.

(15) O.M.P.(I) (COMM.) 222/2018
INTERCONTINENTAL HOTELS GROUP (INDIA) PVT. LTD. &
ANR. Petitioners
Through: Mr.Tejas Karia, Ms.Ananya Aggarwal,

Ms.Shruti Sabharwal, Ms.Surbhi Lal, Advs.

versus

DUET INDIA HOTELS (AHMEDABAD) PVT. LTD.

..... Respondent

Through: Mr.Dayan Krishnan, Sr. Adv. with
Mr.Vijay, Mr.N.K.Sharma, Ms.Aakash Lodha,
Mr.Sanjeevi Seshadri, Advs.

(16) O.M.P.(I) (COMM.) 223/2018

INTERCONTINENTAL HOTELS GROUP (INDIA) PVT. LTD. &
ANR.

..... Petitioners

Through: Mr.Tejas Karia, Ms.Ananya Aggarwal,
Ms.Shruti Sabharwal, Ms.Surbhi Lal, Advs.

versus

DUET INDIA HOTELS (HYDERABAD) PVT. LTD.

..... Respondent

Through: Mr.Dayan Krishnan, Sr. Adv. with
Mr.Vijay, Mr.N.K.Sharma, Ms.Aakash Lodha,
Mr.Sanjeevi Seshadri, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. These petitions have been filed by the petitioners under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') due to termination of the Hotel Management Agreement(s) by the respondent. As the facts are almost common in all aspects, the same are being taken from OMP (I) (Comm.) No.220/2018 for the sake of convenience.

2. It is the case of the petitioners, that the petitioners had entered

into a Hotel Management Agreement dated 7th November, 2011 with the respondent. By way of the Second Amendment executed on 31st March, 2017 to the said agreement, an exit option was provided to the respondent in form of clause 23. The respondent claiming to exercise its right as provided by the Second Amendment to the agreement, sought to terminate the Hotel Management Agreement by way of its notice dated 27th April, 2018. There are disputes between the parties as to whether the respondent was entitled to rely upon clause 23 as inserted by way of the Second Amendment to the Agreement or not.

3. Learned senior counsel for the respondent at the outset raises the issue of territorial jurisdiction of this Court to entertain the present petition. He draws my attention to paragraph 91 of the petition, which is reproduced herein under:-

“91) The Petitioners state that this Hon'ble Court has the territorial jurisdiction to entertain the present petition. Clause 18 of the Agreement provides that the place of arbitration is in India. The Petitioners submit that a part of the cause of action arose in Delhi as

a. The Respondent's registered address as indicated in the Hotel Management Agreement is in Delhi. Clause 16.3 of the Agreement provides that any change in details of the parties has to be notified by a notice under Clause 16. The Petitioners submit that no such notice has been received by them; and

b. The Hotel Management Agreement was executed in Delhi, India.

Therefore, this Hon'ble Court has jurisdiction to entertain this Petition. Further, the present dispute is a commercial dispute

as defined under Section 2(1)(c) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ("Commercial Courts Act"). Section 10(1) of the Commercial Courts Act provides that in cases of an international commercial arbitration, all applications shall be heard and disposed of by the Commercial Division of the High Court, which has jurisdiction to decide the subject matter."

4. He further draws reference to the affidavit and statement of truth filed in support of the petition by Mr.Venkatesh Gomatam, Director of the petitioner no.1, wherein the following statement is made:-

"3) I say that the statements made in paragraphs 1-7,9-17,20-47,49-55 are based on information from the records maintained by the Petitioner No.1 and Petitioner No. 2 which I believe to be correct and statements made in paragraphs 8, 18-19, 48, 56-95 are based on legal advice."

5. Therefore, in the submission of the learned senior counsel for the respondent, the assertions made in paragraph 91 are not based on the independence of the deponent but on the legal advice received and have to be tested on that anvil. He further submits that both the assertions made in paragraph 91 are not only incorrect but are also claimed to be based on legal advice rather than personal knowledge. To demonstrate that the averment made in paragraph 91 of the petition is incorrect, the learned senior counsel for the respondent places reliance on the e-mail dated 19th February, 2013 addressed by the respondent to the legal counsel for the petitioners whereby the respondent had not only communicated the registered office address

of the respondent to the petitioner, which is at Gurgaon(Haryana), but had also attached therewith certificates issued by the Registrar of Companies in support thereof. He further draws the attention of this Court to the First Amendment Agreement executed on 20th December, 2016, wherein the registered office address of the respondent is recorded as Unitech Trade Centre, Sector -43, Gurgaon, Haryana.

6. He further submits that even the Second Amendment Agreement, on the basis of which the present petition has been filed, records the registered office address of the respondent to be the same as above. He also draws my attention to the Minutes of the Board Meeting by which a resolution was passed by circulation on 13th June, 2013, wherein Mr.Venkatesh Gomatam has signed as a Director of the respondent company, approving the change of the registered office address of the respondent to the above.

7. Learned senior counsel for the respondent, therefore, submits that as far as the first assertion in paragraph 91 of the petition is concerned, the same is incorrect to the knowledge of the petitioners.

8. On the other hand, the counsel for the petitioners submits that in terms of Clause 16.1 and 16.3 of the Agreement dated 7th November, 2011 any change in the address of the respondent was to be communicated by way of a notice as mentioned in the said clause (s). He submits that as no such notice was given to the petitioners, the petitioners could not have taken cognizance of the change of the registered office address of the respondent though it was mentioned in the Amendment Agreement. He further submits that various other correspondences addressed by the petitioners to the respondent were

also addressed to the respondent at its Delhi address and receipt of the same has been duly acknowledged by the respondent.

9. I have considered the submission made by the counsel for the petitioner, however, I am unable to agree with the same. Admittedly, the first amendment and the second amendment to the Hotel Management Agreement records the registered office address of the respondent at Gurugram, Haryana. The e-mail dated 19th February, 2013 clearly gives the notice of change of registered office address of the respondent to the petitioners along with the documentary proof thereof. This has to be read as a notice in terms of clause 16 of the Agreement and the petitioners cannot be heard to contend that the registered office address of the respondent had not changed or due notice thereof had not been received by the petitioner.

10. Coming to the second basis of claiming territorial jurisdiction of this Court, the petitioners have asserted that the Hotel Management Agreement was executed in Delhi, India. Admittedly, the Agreement does not indicate the place of its execution. The assertion that the Hotel Management Agreement was executed in Delhi is claimed to have been based on the legal advice received by the deponent whose affidavit has been filed in support of the contents of the petition. Further, learned senior counsel for the respondent has drawn my attention to an e-mail dated 8th April, 2011 by which the signing instructions had been issued by the Transaction Firm to both the parties. The signing instructions are reproduced herein below:-

“SIGNING PROCEDURE

We SNR Denton LLP have agreed with the in-house legal team

at Intercontinental Hotels Group (Asia Pacific) Pte Ltd. (IHG) the following signing procedure. Please read and follow these instructions carefully. Failure to do so could invalidate your signature and the contract.

- 1. You should satisfy yourself that each HMA is in the form which you are happy to sign.*
- 2. The signatory must print and sign the attached signature page of each HMA (there is no need to print off the full document) - **do not date the signature page.***
- 3. The signatory must then send a single email to Simon Mitchell and Richard Barham of SNRDenton LLP (i.e. simon.mitchell@snrdenton.com and richard.barham@snrdenton.com).*
- 4. You should use the "Forward" function in outlook and your cover email should state the following:*

Naveen- "I attach the Hotel Management Agreements which you sent to me together with the signed Signature page for each. I authorise you to release this to IHG".

IHG - "I attach the Hotel Management Agreements which you sent to me together with the signed signature page for each. I authorise you to release this to Duet".

- 5. You must attach to that single email **BOTH** of the following:
(a) the final version of each HMA (i.e. the Word documents attached to this e-mail); AND
(b) a pdf copy of the signed signature pages."*

11. The learned senior counsel for the respondent has further drawn my attention to the e-mail dated 31st October, 2011 addressed by the representative of the respondent to the petitioner intimating the petitioners of the respondent signing the copy of the Hotel Management Agreement in accordance with the signing instructions. He further draws my attention to the e-mail dated 3rd November, 2011

by which the representative of the petitioners based in Australia signed the copy of the Hotel Management Agreement and had informed that she would be sending the original in accordance with the signing instructions.

12. Learned senior counsel for respondent therefore, submits that the assertion of the petitioners that the agreement signed at Delhi is on the face of it incorrect as the person signing the Agreement on behalf of the respondent was situated at Gurugram, where the Corporate office of the respondent is situated, while the person signing the Agreement on behalf of the petitioners was situated at Australia.

13. Counsel for the petitioners counters the above by stating that as the registered office of the respondent at that time was situated at Delhi, it should be presumed at least for this stage, that the agreement would have been signed at the registered office. Further, relying upon the judgment of this Court in *Ansal Buildwell Ltd. v. North Eastern Indira Gandhi Institute of Health & Medical Science & Ors.* 2005 (81) DRJ 147, he submits that at this stage, the assertion of the petitioner that the agreement was signed at Delhi should be considered sufficient to vest this Court with jurisdiction.

14. I am unable to agree with the submission made by the counsel for the petitioners. The chain of events referred to by the counsel for the respondent clearly show that the Corporate Office of the respondent was situated at Gurugram during the relevant period. Further as noted above, the subsequent Amendment Agreements have clearly recorded that the registered office of the respondent had shifted to Gurugram. The agreement, in any case, was executed and

communicated through e-mail with the petitioners admittedly executing the same at Australia. The two e-mails referred above also show that it was first signed by the respondent and then by the petitioners. The agreement is therefore, made when the petitioners signed the same and, therefore, the agreement can be said to have been executed at Australia. In any case, mere assertion of the petitioners that the Agreement was signed in Delhi especially in light of all the facts that have been stated hereinabove, cannot be accepted to vest jurisdiction in this Court. In fact, the petitioners had not disclosed these mails in the petition(s) while making a bald statement of the agreement having been executed at Delhi. This itself should be sufficient to non-suit the petitioners.

15. In view of the above, I find that this Court would lack territorial jurisdiction, to entertain the present petition.

16. The petition is accordingly dismissed for want of jurisdiction, leaving it open to the petitioners to file the same before the Court of competent jurisdiction, if so advised.

NAVIN CHAWLA, J

MAY 31, 2018
RN