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

+ ARB.P. 537/2018

APEEJAY SURRENDRA PARK HOTELS LTD Petitioner
Through Mr.Divyanshu Rai and Mr.Nikhil
Nayar, Advs.

versus

SILVER STREAK HOTELS PVT.LTD Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **20.11.2018**

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of a Sole Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the "Management and Technical Services Agreement" dated 04.07.2014 executed between the parties. The said Agreement contains an Arbitration Agreement in form of Clause 17 thereof, which is reproduced hereinbelow:

"17. Dispute Resolution

17.1 All disputes, differences, controversies and questions directly or indirectly arising at any time under, out of, in connection with or in relation to this Agreement (or the subject matter of this Agreement) including, without limitation, all disputes, differences, controversies and questions relating to the validity, interpretation, construction, performance and enforcement of any provision of this Agreement shall be finally, exclusively and conclusively settled by an arbitral tribunal comprising

of 3 (three) arbitrators. The Owner shall appoint 1 (one) arbitrator and the Operator shall appoint one (1) arbitrator and the 2 (two) appointed arbitrators shall appoint the third arbitrator.

17.2 The arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any subsequent enactment and amendment thereto. The arbitration proceedings shall be conducted in English and arbitral award shall be made in New Delhi, India.”

The dispute having arisen between the parties, the petitioner filed an application under Section 9 of the Act being OMP(I)(COMM) 167/2018. The same was disposed of by this Court vide its order dated 23.05.2018.

In the meantime, the petitioner also invoked the Arbitration Agreement vide its notice dated 28.11.2017 nominating its Arbitrator. As the respondent failed to nominate its Arbitrator, the present petition has been filed by the petitioner.

Notice of this petition was issued to the respondent. The petitioner has filed an affidavit of service indicating that the notice has been duly served on the respondent at its registered address.

In spite of service, none appears for the respondent, though, matter had been passed over as well. Similar was the position on 14.11.2018 as well.

As the existence of the Arbitration Agreement and due invocation thereof remained uncontested by the respondent, I see no impediment in appointing a nominee Arbitrator on behalf of the respondent for adjudicating the disputes that have arisen between the parties in relation to the abovementioned Agreement.

I appoint Mr.Meet Malhotra, Senior Advocate (C-3/8, Vasant Vihar, New Delhi-110057, Mobile No.9810047574) as a nominee Arbitrator on behalf of the respondent.

The Arbitrator appointed by the petitioner as also the nominee Arbitrator appointed for the respondent shall give disclosure in terms of Section 12 of the Act before proceedings with the reference. They shall further appoint the Presiding Arbitrator for the constitution of the Arbitral Tribunal.

The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

NOVEMBER 20, 2018/Arya