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

Date of Decision: 04.10.2018

+ ARB.P. 720/2018

AYUSH HOTELS & RESORTS LLP, THROUGH ITS DIRECTOR
SHRI NAVEEN RANA, S/O SHRI RAMPHAL
RANA

..... Petitioner

Through: Mr. S.S. Dalal, Mr, Yogesh Saini, Mr.
Vipin Rathee and Mr. Simanta
Kumar, Advs.

Versus

SHRI NITIN DEV

..... Respondent

Through: Mr. Amit Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1 Notice in this petition was issued on 26.09.2018. Mr. Amit Seth had appeared on advance notice. The objection, which Mr. Seth had taken on that date with respect to the maintainability of the petition, was that the lease agreement was not registered. I had indicated in the order that if that was the only objection, then, the same was not, *prima facie*, sustainable. Since, Mr. Seth sought time to file a reply, liberty was given to him in that behalf.

2 Admittedly, no reply has been filed. Mr. Seth, however, says that apart from the objection taken on that date, he has another objection to state with regard to the maintainability of the petition, which is, that the lease agreement relied upon by the petitioner, which contains the arbitration agreement, is not stamped. However, Mr. Seth, fairly concedes that in view of the decision rendered by this Court in the matter of: *Sandeep Soni Vs.*

Sanjay Roy & Ors in Arb. P. No.413/2017, MANU/DE/3299/2018, this issue can be dealt with by the Arbitrator. Mr. Seth submits that since this is a petition which has been filed post the amendment made to the Arbitration and Conciliation Act, 1996 (in short '1996 Act'), this methodology could be adopted by the learned Arbitrator. Learned counsel for the petitioner says that he has no difficulty with the Arbitrator's examining as to whether or not the lease agreement is inadequately stamped and whether the provisions of the Indian Stamp Act, 1899 ought to be triggered in the matter at hand.

3 Accordingly, in view of the submissions made before me by the learned counsel for the parties, the petition is allowed.

4 Mr. Mukul Gupta, Senior Advocate (M: 9810135004), is appointed as an Arbitrator in the matter. Learned counsel for the parties agree that the learned Arbitrator should be paid fee as per the Fourth Schedule appended to the 1996 Act. It is ordered accordingly.

5 The petition is disposed of in the aforesaid terms.

6 It is made clear that the respondent will have liberty to move the learned Arbitrator for taking up the issue with regard to the impact of the non-registration of the lease agreement and in respect of the alleged inadequacy of stamp affixed on the document.

7 I may only note that the learned counsel for the petitioner has brought to my notice two orders passed by the Uttarakhand High Court in W.P. (Crl.) No.1236/2018. These orders are dated 09.07.2018 and 06.08.2018. The said orders, it appears, came to be passed when the respondent approached the Uttarakhand High Court for quashing of FIR No.38 of 2018, dated 18.06.2018, lodged at the behest of the petitioner under Sections 406, 409 & 506 of the IPC. The Uttarakhand High Court, vide order dated

06.08.2018, dismissed the writ petition and directed the Collector, Tehri Garhwal to comply with its earlier order i.e. order dated 09.07.2018. Via the order dated 09.07.2018, the High Court had directed that the lease agreement dated 22.08.2017 should be placed before the Collector for impounding and that he should convey to the Court via a report as to the stamp duty and penalty, if any, payable by the respondent herein.

8 These are aspects, according to me, the learned Arbitrator will take into account while passing the order with regard to the allegations of the respondent herein that the lease agreement is inadequately stamped. Given the scope of the petition and what is observed hereinabove, I need not deal with this aspect of the matter.

9 The Registry will dispatch a copy of this order to the learned Arbitrator.

10 The petition is, thus, disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

OCTOBER 04, 2018

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