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

+ ARB.P. 410/2017

**GOLDEN JUBILEE HOTELS PRIVATE
LIMITED**

..... Petitioner

Through: Mr Mahesh Prasad, Advocate.

versus

AMERICAN EXPRESS BANKING CORP Respondent

Through: Mr Amarjeet Singh Chandhiok, Sr.
Advocate with Ms Jagriti Ahuja, Mr
Ritesh Singh, Ms Ramya Kutty and
Ms Chandni Ghai, Advocates.
Ms Jhum Jhum Sarkar, Advocate for
EIH/applicant in IA No.9759/2017.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.05.2018

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to the 'Merchant Agreement' dated 16.04.2017 (hereafter 'the Agreement'). The Agreement includes an arbitration clause, which reads as under:-

"14. DISPUTE RESOLUTION

a. Claims. All Claims arising in connection with this Agreement, upon your or our election, shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996, which provisions are deemed to be incorporated by reference into this clause. Claim means any

claim (including initial claims, counterclaims, cross-claims, and Third Party claims), dispute, or controversy between you and us arising from or relating to this Agreement, including any question regarding its existence, validity or termination, or the relationship resulting from this Agreement, whether based in contract, tort (including negligence, strict liability and fraud), statutes, regulations or other body of law.

b. Arbitration Procedure. It is agreed that: (i) the tribunal shall consist of one arbitrator; (ii) the place of the arbitration shall be Delhi; and (iii) the language of the arbitration shall be in English. The arbitrator will have the power and authority to grant equitable relief (e.g., Injunction, specific performance) and, cumulative with all other remedies, will grant specific performance whenever possible. The arbitrator will have no power or authority to alter this Agreement or any of its separate provisions, including this clause, nor to determine any matter or make any award except as provided in this clause.

c. Small Claims. We will not elect to use arbitration under this clause for any individual Claim that you properly file in accordance with the special procedure for handling smaller claims 10 a local or county court, so long as the Claim is pending only in that court. Injunctive relief sought to enforce the confidentiality provisions of this Agreement will not be subject to the requirements of this clause.

d. Complaints. If you have any complaints or problems in connection with this Agreement, please contact Merchant Services at 1800 4191414 (Toll Free) or + 91 124 280 1414 (Landline) from Monday to Saturday (10:00 to 9:00).”

2. Mr Chandhiok, learned Senior Counsel appearing for the respondent does not dispute the existence of an arbitration agreement between the parties. He, however, states that there are no real disputes between the parties, as there is no quarrel that the respondent was obliged to pay the amount collected during the period in question (October, 2015 to August,

2016). He further states that the said amount was also deposited in a separate account at the instance of EIH Ltd. and the petitioner had commenced an arbitration proceeding against EIH Ltd. in respect of the said amount. The learned counsel appearing for the petitioner counters the contention that there is no dispute with the respondent. He submits that the respondent had wrongfully remitted the funds to another account.

3. At this stage, this Court is not required to examine the disputes between the parties. Since there is no dispute that an arbitration agreement exists between the parties, it is necessary that an arbitrator be appointed.

4. The learned counsel for the parties request that Justice R. V. Raveendran (Retired), who is also the Presiding Arbitrator of the Arbitral Tribunal constituted to adjudicate the disputes between the petitioner and EIH Ltd. be appointed as the sole arbitrator to adjudicate the disputes between the parties. Accordingly, with the consent of parties, Justice R. V. Raveendran, a former Judge of the Supreme Court of India, is appointed as the sole arbitrator to adjudicate the disputes falling within the scope of the arbitration clause as set out above. This is subject to the Arbitrator making the necessary disclosure under Section 12 of the Act and not being ineligible under Section 12(5) of the Act.

5. The Arbitrator shall fix his fee in consultation with the learned counsel for the parties and having regard to the fourth schedule to the Act.

6. The parties are at liberty to approach the Arbitrator for further proceedings.

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

IA No.9759/2017

8. This is an application filed by EIH Ltd. for being impleaded in the present proceedings.

9. Admittedly, EIH Ltd. is not a party to the arbitration agreement between the petitioner and the respondent. Accordingly, the application is dismissed.

VIBHU BAKHRU, J

MAY 22, 2018

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