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

% *Date of Judgment: 25th October, 2018*

+ **FAO (OS) (COMM) 242/2018 & CM No. 44223/2018 (Stay)**

**RADHAKRISHNA FOODLAND PRIVATE
LIMITED**

..... Appellant

Through: Mr. P. Chidambaram, Sr. Advocate
with Ms. Tine Abraham, Ms. Varuna
Bhanrale and Mr. Akshay Puri, Advs.

versus

**CONNAUGHT PLAZA RESTAURANTS PRIVATE
LIMITED**

..... Respondent

Through: Mr. Jayant K. Mehta, Mr. Bhargav R.
Thali, Mr. Abhinandan Banerjee and
Mr. Rahul Kukreja, Advs.

CORAM:

**HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH**

G.S. SISTANI, J. (ORAL)

Caveat Pet. 973/2018

1. Mr. Mehta has entered appearance on behalf of the caveator.
2. The caveat petition is accordingly disposed of.

CM APPL 44224/2018 (Exemption)

3. Exemption is allowed, subject to all just exceptions.
4. The application stands disposed of.

FAO (OS) (COMM) 242/2018

5. Challenge in this appeal is to the order dated 17.09.2018 passed by the learned Single Judge of this Court on an application filed by the

respondent in a petition under Section 9 of the Arbitration and Conciliation Act, 1996. During the hearing of this petition, primarily a preliminary objection was raised with regard to the maintainability of the petition under Section 9 of the Arbitration and Conciliation Act, which was filed before the learned Single Judge as according to the respondent/ appellant herein, there was no valid subsisting arbitration agreement between the parties. The learned Single Judge has for the reasons so stated in the order declined to accept this contention of the appellant herein (respondent before the learned Single Judge). The learned Single Judge has also issued directions for release of goods in favour of the petitioner/ respondent herein. Learned Senior Counsel for the appellant has submitted that this part of the order has worked itself out, he has instructions not to make any submissions in this regard.

6. We are informed that the respondents have issued a notice to the appellant (respondent before learned Single Judge) nominating their arbitrator and proposing a sole arbitrator. Mr. P. Chidambaram, learned Senior Counsel submits that the appellant has serious objections to the appointment of an arbitrator, as admittedly, parties had entered into an agreement on 06.08.2012 for a period upto 10.08.2013 which agreement was renewed for a limited period between 25.03.2013 upto 30.05.2013 and thereafter, sought to be extended retrospectively in terms of a communication dated 31.03.2016 for a further period of three years effective from 31.05.2013 to 31.03.2016. Strong reliance is placed on two identical clauses which find mention in the agreement dated 25.03.2013 being

Clauses 15 and 31 which we reproduce below to submit that once the agreement has come to an end without a written agreement, the same could not have been extended.

“15. This Agreement shall supersede the earlier agreements/ arrangements if any with respect to the subject matter of the Agreement. Any change in the terms herein shall be effective only upon the written concurrence of both the Parties herein.

.....

31. This Agreement shall supersede the earlier agreements / arrangements if any with respect to the subject matter of the Agreement. Any change in the terms herein shall be effective only upon the written concurrence of both the Parties herein.”

7. It is contended by the counsel for the appellant that although this ground was raised before the learned Single Judge as is reflected in Para 22 of the order, but no finding was rendered.
8. Mr. Jayant Mehta, Advocate has entered appearance on behalf of the respondent. Mr. Mehta submits that he has invoked the arbitration clause. Mr. Chidambaram submits that the observations and findings of the learned Single Judge would stand in his way in case the respondent invokes Section 11 of the Arbitration and Conciliation Act and thus, all objections which have been raised and the observations which have been made should not come in the way at the time of raising objections for appointment of an arbitrator before the appropriate court of jurisdiction.
9. We have heard learned counsel for the parties and examined the order passed by the learned Single Judge, the order is infact in three parts.

The first part deals with an application filed by the intervenor under Order 1 Rule 10 CPC; the second part of the order primarily deals with the interim relief so sought and; the third part of the order deals with the objections so raised with regard to maintainability of the petition under Section 9 of the Arbitration and Conciliation Act in the absence of an Arbitration clause.

10. In our view, it would be in the fitness of things to make it clear that should the appellant herein contest appointment of an arbitrator before the appropriate court of jurisdiction, all legal grounds and submissions including submissions and grounds raised while contesting the petition under Section 9 of the Arbitration and Conciliation Act filed by the respondent would be kept open and to be decided unaffected by any observation made in the order dated 17.09.2018 passed by the learned Single Judge. The legal rights and contentions of both the parties are kept open.
11. Accordingly, with these observations, the appeal and the accompanying applications stand disposed of.

G.S.SISTANI, J.

JYOTI SINGH, J

OCTOBER 25, 2018

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