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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 845/2019

LANGHAM CAPITAL INDIA PRIVATE LIMITED Petitioner
Through Ms.Manjula Baxla with Mr.Kapil
Arora, Advs.
versus

SKY GATE HOSPITALITY PRIVATE LIMITED Respondent
Through Mr.Ashish Kothari with Ms.Isha
Tyagi, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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04.03.2020

1. The present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeks appointment of an Arbitrator to adjudicate the disputes and differences, which have arisen between the parties in relation to engagement agreement dated 27.07.2018.
2. Learned counsel for the petitioner submits that in accordance with the terms of the engagement agreement, the petitioner had raised invoices towards success fee, which was payable to the petitioner but the respondent has failed to pay the same and, therefore, the petitioner invoked arbitration by way of legal notice dated 22.08.2019. In response thereto the respondent has not only denied its liability to pay any amount to the petitioner but also refused the petitioner's proposal for appointment of an Arbitrator. She, therefore, prays that this Court may appoint an independent Arbitrator in terms of the arbitral clause contained in the engagement agreement, which reads as under:-

“AMENDMENT AND GOVERNING LAW

This agreement may not be amended.... This letter shall be

governed by and construed in accordance with Indian law. Any disputes arising under this agreement shall be settled by arbitration. For the purpose of such arbitration, there shall be sole arbitrator who shall be appointed by mutual agreement of both the parties or in case of disagreement as to the appointment of the sole arbitrator, three arbitrators, of which the Company and Langham Capital shall appoint one arbitrator each, and the third arbitrator shall be appointed by the two arbitrators appointed by the parties. The arbitration proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The venue for the arbitration proceedings shall be New Delhi, India and the language of arbitration shall be English. The arbitrator(s) award shall be substantiated in writing. The Parties shall submit to the arbitrator(s) award and the award shall be enforceable in any competent court of law. "

3. On the other hand, learned counsel for the respondent opposes the petition by contending that the claim of the petitioner is beyond the scope of the engagement agreement and that no success fee is due and payable to the petitioner as the petitioner had failed to fulfil the requirements of the engagement agreement.

4. Having considered the submissions of the parties, I am of the view that in the light of the admitted position that there is an arbitral clause and that the claim made by the petitioner is under the engagement agreement, the petition is liable to succeed and while considering a petition under Section 11(6) of the Act, it is not accepted to examine the merits of the rival claims of the parties on merits.

5. The petition is accordingly allowed and Justice Pratibha Rani, Former Judge, Delhi High Court (Mob:9910384626) is appointed as

the Sole Arbitrator to adjudicate the disputes and differences which have arisen between the parties in reference to engagement agreement dated 27.07.2018.

6. It is made clear that this Court has not made any observation on the merits of the matter and it will be open for the parties to raise all pleas permissible in law, before the learned Arbitrator.

7. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC). The fees of the learned arbitrator shall be in accordance with the Schedule of fees prescribed under the Delhi High Court Arbitration Centre (Administrative Costs and Arbitrators' Fees) Rules.

8. Before commencing arbitration proceedings, the Arbitrator will ensure compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

9. A copy of this order be sent to Delhi International Arbitration Centre (DIAC) as also to the learned Arbitrator.

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

REKHA PALLI, J

MARCH 04, 2020/sr