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

Decided on 18th November, 2020

+ **ARB.P. 609/2020 and I.A. 10649/2020**

ROCKLAND HOTELS LTD. Petitioner
Through **Ms. Aanchal Basur and Mr. Akash Kundu, Advs.**
versus

M/S CASA2 STAYS PVT. LTD. Respondent
Through **Ms. Somya Rathore, Adv.**

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)
% **18.11.2020**
(Video-Conferencing)

C. HARI SHANKAR, J.

I.A. 10649/2020

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

ARB.P. 609/2020

1. With the consent of the parties, this petition is being taken up

ARB.P. 609/2020

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for disposal, without the requirement of issuance of notice, as it merely seeks intervention of this Court to appoint an arbitrator on behalf of the respondent, in exercising its jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”).

2. The dispute, between the parties, emanates from an Agreement, dated 8th May, 2019, whereby the respondent was contracted to manage the guesthouse of the petitioner, on a lease basis, with a monthly lease fixed at ₹ 6,75,000/- exclusively. The petition alleges that there were defaults, on the part of the respondent, in paying the monthly lease, resulting in a roadblock in the smooth management of the guesthouse. It is further averred that, in March, 2020, the respondent requested the petitioner to waive two months’ rent, and addressed a further communication, in the same month, seeking waiver of the rent and terminating the Agreement, invoking the *force majeure* clause, contained therein. The petitioner disputes the right of the respondent to terminate the Agreement invoking the *force majeure* clause. Though, the guesthouse was, subsequently, handed over by the respondent on 30th April, 2020, it is alleged that damages had taken place in the premises thereof. It is alleged that the guesthouse was in a dilapidated condition, requiring the petitioner to undertake significant expenses, towards the restoration of the premises. Additionally, it is alleged that, the respondent has also defaulted in the payment of electricity, gas, telephone bills etc.

3. The petitioner further avers that efforts, at amicable settlement

of the disputes, did not fructify, resulting in the petitioner issuing a Notice of Arbitration, dated 24th July, 2020, to the respondent. The arbitration clause in the Agreement between the petitioner and the respondent reads as under:

“Any dispute or controversy arising out of or relating to this Agreement shall be referred to arbitration under the Arbitration & Conciliation Act, 1996 and the rules made thereunder, in English language, and shall be heard and determined by an arbitral tribunal composed of three arbitrators, one each appointed by the Owner and the Company and the third appointed by the two arbitrators so appointed. Arbitration shall be held in New Delhi, India. The decision of the arbitral tribunal shall be final, conclusive and binding on the Parties...”

4. By the Notice of Arbitration, the petitioner claimed an amount of ₹ 60,00,000/-, along with interest, from the respondent. Additionally, in the notice, the petitioner nominated Mr. Padam Saxena, a learned retired District Judge, as its ‘nominee arbitrator’.

5. As there has been a default, on the part of the respondent, in appointing its arbitrator, in accordance with Clause 10 of the Agreement, between the parties, the petitioner has invoked the jurisdiction of this Court, under Section 11(6) of the 1996 Act.

6. More than thirty days having lapsed since the appointment, by the petitioner, of its arbitrator, and the respondent being in default of suggesting a name of an arbitrator, on its behalf, the petitioner is justified in requesting this Court to appoint an arbitrator on behalf of

the respondent.

7. Ms. Somya Rathore, learned counsel for the respondent, submits that she has no objection, if this Court appoints an arbitrator on behalf of the respondent.

8. Accordingly, this Court appoints Ms.R.Kiran Nath, learned Additional District Judge, Delhi, (Retd.) as the nominee arbitrator on behalf of the respondent. She may be contacted at 9910384659.

9. The terms of the said learned arbitrator would be the same as those, which applied to Mr. Padam Saxena, learned arbitrator, appointed by the petitioner.

10. The respondent is directed to contact the learned arbitrator at the contact details provided, within 24 hours, so as to ascertain the schedule, in this regard.

11. The two learned arbitrators would, therefore, proceed to appoint the third arbitrator, in accordance with Clause 10 of the Agreement, between the petitioner and the respondent, and the provisions of the 1996 Act.

12. Needless to say, the arbitration would proceed in accordance with the provisions of the 1996 Act.

13. With the aforesaid directions, this petition stands disposed of.

C. HARI SHANKAR, J.

NOVEMBER 18, 2020

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