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

% *Date of Decision: 3rd December, 2020*

+ **FAO(OS) (COMM) 146/2020**

OYO HOTELS AND HOMES PVT. LTD. Appellant

Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. Jeevan B. Panda, Ms. Shalini Sati Prasad,
Mr. Satish Padhi, Ms. Meher Tandon, Mr. Gaurav
Sharma, Advocates

Versus

PEARL HOSPITALITY & EVENTS PVT LTD Respondent

Through: Mr. Ankit Jain, Advocate with
Mr. Ankur Jain, Mr. Abhay Pratap Singh,
Mr. Mohina Anand, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

Proceedings in the matter have been conducted through video conferencing.

CM 29146/2020 (exemption)

Exemption allowed, subject all just exceptions.

The application stands disposed of.

FAO(OS) (COMM) 146/2020 & CM 29145/2020 (stay)

1. This appeal has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') against an order passed by the learned Single Judge dated 03.11.2020 in OMP(I)(COMM)

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No.123/2020 and IA No.4644/2020 (Annexure-A1 to the memo of this appeal), whereby the learned Single Judge has directed this appellant (original respondent) to deposit Rs.2,23,50,000/- (Rupees Two Crores Twenty Three Lakhs Fifty Thousands only) before the Registrar General of this Court. Being aggrieved and feeling dissatisfied by this order, the present appeal has been preferred by the original respondent.

2. Learned counsel for both the parties have jointly represented to this Court that an arbitrator is required to be appointed to resolve the disputes between the parties arising out of the Management Service Agreement entered into between the parties to this litigation. Under clause 10 of the said Agreement, there is a provision for appointment of the arbitrator and the applicability of the laws to resolve the disputes arising between the parties. Moreover, it is submitted by the learned counsel for the respondent (original applicant in OMP No.123/2020) that an application under Section 11 of the Act of 1996 has already been preferred after giving a notice to this appellant and this Court has issued a notice in the said application returnable on 07.01.2021.

3. It is agreed by the learned counsel for both the sides that any former judge of this Court be appointed as the Arbitrator to resolve the disputes between the parties as mentioned in this appeal and as mentioned in OMP No.123/2020. They have jointly requested this Court to appoint the arbitrator.

4. We, therefore, appoint Hon'ble Mr. Justice (Retd.) G. S. Sistani, former Judge of this Court (Mobile: 98713-00034), as the learned Arbitrator
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to resolve the disputes between the parties to this litigation arising out of the Management Service Agreement. The learned Arbitrator will fix his own terms.

5. As we have already appointed the arbitrator, we do not think it is necessary to go into the questions raised in this appeal. Keeping in mind the principles of Section 9(3) of the Act of 1996, it would be more appropriate to grant liberty to this appellant to prefer an application under Section 17 of the Act of 1996 for variation in the interim arrangement contained in the impugned order dated 03.11.2020 in OMP(I)(COMM) No.123/2020 with IA No.4644/2020, within a period of 15 days from today. As and when such application is preferred by this appellant before the learned Arbitrator, the same will be decided on its own merits and in accordance with law and on the evidence on record and without being influenced by the order of the learned Single Judge dated 03.11.2020 in OMP(I)(COMM) No.123/2020 with IA No.4644/2020 (Annexure-A1 to the memo of this appeal).

6. Till the application, to be preferred by the appellant (original respondent) under Section 17 of the Act of 1996, is decided by the learned Arbitrator, the order passed by the learned Single Judge dated 03.11.2020 in OMP(I)(COMM) No.123/2020 with IA No.4644/2020 is hereby stayed and will not be operative, subject to the orders passed by the learned Arbitrator under Section 17 of the Act of 1996. This appellant will also give an undertaking in the application before the learned Arbitrator that it will maintain assets worth at least Rs.2,23,50,000/- as a security. This is also subject to further orders that may be passed by the learned Arbitrator. The

parties are at liberty to move application(s) before the learned Arbitrator in accordance with law.

7. It is also agreed by the learned counsel for both the parties that the learned counsel of the appellant (original respondent) will hand over the keys of the premises in question to the learned counsel for the respondent [original applicant in OMP(I)(COMM) No.123/2020] within a period of one week from today.

8. With these observations, this appeal is disposed of. The application for stay is also disposed of.

CHIEF JUSTICE

PRATEEK JALAN, J

DECEMBER 3, 2020
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