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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 815/2020 & I.A. 12710/2020-Ex**

Decided on: 24th December, 2020

JORAWER SINGH

..... Petitioner

Through: Mr. Vijay K. Gupta, Adv.

versus

BLACK PEPPER HOSPITALITY ANDEVENTS PVT LTD

..... Respondent

Through: Ms. Mayanka Dhawan, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (O R A L)

24.12.2020

(Video-Conferencing)

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1. This petition, under Section 11 (6) of the Arbitration & Conciliation Act, 1996, calls upon this court to appoint a sole arbitrator, to arbitrate the disputes between the parties.

2. The dispute, as set out in the petition, and without prejudice to the respondent's rights to contest all or any of the allegations against it, maybe summarized thus.

3. On 20th August, 2019, a Management Service Agreement was executed between the petitioner and the respondent, whereunder the respondent was to run and manage the banquet hall of the petitioner. The petitioner was entitled to a monthly management fee of ₹ 16,51,000/-, with effect from 1st September 2019.

4. Monthly management fee was paid, by the respondent to the petitioner till March, 2020 but was not paid for the period April to June, 2020.

5. *Vide* e-mail dated 20th June 2020, the petitioner called upon the respondent to pay the arrears of management fee as on 30th June, 2020.

6. The respondent, *vide* reply e-mail dated 2nd July 2020, pleaded *force majeure*, and sought to invoke the clause, to that effect, contained in the Management Service Agreement.

7. On that ground, the respondent also sought to revoke the Management Service Agreement which, according to the petitioner, was impermissible, as the agreement contemplated a 4 ½ year lock-in period, which would expire only on 28th February, 2024. The petitioner, accordingly, responded to the e-mail dated 2nd July, 2020 of the respondent, *vide* reply e-mail dated 10th July, 2020.

8. Attempts at amicable resolution of the disputes failed.

9. Eventually, it is alleged that the respondent cancelled the Management Service Agreement and stopped rendering services thereunder, to the petitioner, with effect from 22nd September, 2020.

10. The petitioner alleges that an amount of ₹ 5 lakhs was paid by the respondent to the petitioner, with an undertaking to pay the balance amount shortly thereafter.

11. It is also averred that, on 22nd September 2020, the respondent

handed over peaceful possession of the premises to the petitioner, except for one DJ set and certain *chaat* counters.

12. The petitioner alleges that, in respect of goods, utensils and articles provided to the respondent, which were not available in the premises on the date when the premises were handed over to the petitioner, the respondent is liable to pay an amount of ₹3,26,962/- to the petitioner. This amount, according to the petition, is acknowledged by the respondent.

13. The petition further alleges that, in sum, the respondent agreed to pay ₹4,79,911/- to the petitioner, along with applicable Goods and Services Tax (GST) of ₹45,00,000/-. The respondent, however, did not pay the amounts which it undertook to pay to the petitioner and had not deposited the requisite GST.

14. Premised on the above facts, the petition alleges that the respondent is bound to pay an amount of ₹ 26,39,211/- to the petitioner.

15. The petitioner issued a legal notice to the respondent on 12th October 2020, calling on the respondent to pay the aforesaid amount of ₹ 26,39,211/-.

16. In a response dated 4th November, 2020, the respondent has denied its liability.

17. In these circumstances, the petition avers that arbitrable disputes have arisen between the petitioner and the respondent. Ms. Mayanka Dhawan, learned counsel for the respondent, does not dispute

this proposition, though she submits that the allegations against the respondent are incorrect and that the respondent does not owe any amount to the petitioner.

18. The Management Service Agreement contemplates resolution of the disputes between the petitioner and the respondent by way of arbitration, without any prior pre-arbitral dispensation being envisaged there in. The relevant covenant, of the Management Service Agreement, Article 9.1 of the Management Service Agreement, which so provides, reads as under:

“9.1 **Arbitration:** all disputes arising under this agreement shall be resolved by a sole arbitrator, in accordance with the provisions of the Arbitration and Conciliation Act, 1996, the sole arbitrator shall be appointed by the owner alone. The seat of arbitration shall be at New Delhi and the language shall be English. However, in case of dispute the service provider will have a right to give a notice to owner for appointment of arbitrator by himself.”

(Emphasis as in original)

19. It is asserted that, *vide* letter dated 2nd November, 2020, addressed to the respondent, the petitioner invoked the afore-extracted arbitration clause, appointing an advocate as the sole arbitrator to decide the dispute between the parties. This name was not agreeable to the respondent, who, *vide* response dated 7th November, 2020, sought a discussion with respect to the arbitrator who would arbitrate on the disputes. In view thereof, the petitioner has withdrawn the proposal to appoint the advocate named in the notice dated 2nd November, 2020.

20. Learned counsel for the parties request this court, *ad idem*, to, in

the circumstances, appoint a sole arbitrator to arbitrate on the disputes between the parties.

21. Article 9.1 of the Management Service Agreement, which grants complete power to the petitioner to appoint the arbitrator, obviously cannot be enforced, in view of Section 12(5) of the Arbitration & Conciliation Act, 1996 read with the Seventh Schedule thereto and the judgments of the Supreme Court in *Perkins Eastman Architects BPC v. HSCC (India) Limited*¹ and *Bharat Broadband Network Ltd. v. United Telecoms Ltd.*² as well as the of this court in *JMC Projects (India) Ltd. v. Indure Pvt. Ltd.*³. As arbitrable disputes exist between the parties, and the parties have not been able to agree to the name of an arbitrator, to arbitrate on the disputes.

22. In these circumstances, learned counsel for the parties, *ad idem*, request this court to appoint a sole arbitrator to arbitrate on the disputes between the parties.

23. In these circumstances, this court disposes of the present petition by appointing Mr. Padam Kant Saxena, Former Additional District and Sessions Judge, Delhi as the sole arbitrator, to arbitrate on the aforesaid disputes between the parties. The contact details of the learned sole arbitrator are as under:

Phone No.: 9910384668.

Address: B 155, Mount Kailash, East of Kailash, New Delhi 110065.

Email-id: padamksaxena@gmail.com

¹ 2019 SCC OnLine SC 1517

² (2019) 5 SCC 755

³ MANU/DE/1609/2020

24. The learned counsel for the parties, or the parties themselves, may contact the learned sole arbitrator, at the aforesaid contact details, within 48 hours of receipt of a copy of this order, which would be emailed to learned counsel for the parties, by the Registry as soon as it is corrected and finalized. The learned sole arbitrator would be entitled to charge fees in accordance with the Fourth Schedule of the Arbitration & Conciliation Act, 1996 or any other amount as agreed between the parties and the learned sole arbitrator.

25. The learned sole arbitrator would enter on the reference and, within one week thereof, would furnish the requisite disclosure under section 12(2) of the 1996 Act.

26. With the aforesaid observations, this petition stands disposed of.

C. HARI SHANKAR, J

DECEMBER 24, 2020/ss