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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) (COMM.) 189/2020 and I.As.5727-5728/2020

ROYALE BLUE CLUB PRIVATE LTD. Petitioner

Through: Mr. Shivanshu Kumar, Mr.
Sunil Kr. Gandhi, Mr. Dipender
Chauhan, Mr. Kunal Kumar and
Mr. Shobhit Chandra Sharma,
Advs.

versus

OYO HOTELS AND HOMES PRIVATE LTD. Respondent

Through: Mr. Jayant Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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30.07.2020

(Video-conferencing)

1. The prayer clause, in this petition, preferred under Section 9 of the Arbitration & Conciliation Act, 1996, reads thus :

“It is therefore most respectfully prayed that this Hon'ble Court may be pleased to pass in favour of the Petitioner and against the Respondent, ad-interim ex-parte orders against the Respondent, their agents, employees, associates, etc. or any other person claiming through the Respondent:

- a) to handover the peaceful vacant possession of the said Venue to the Petitioner and;
- b) to pay to the Petitioner an amount of Rs. 1,24,80,000/- towards the Benchmark Revenue Management Fee, from March 2020 to July 2020 alongwith interest @ 24% per annum,

c) to pay to the Petitioner an amount of Rs. 1,50,000 towards utility charges, from March 2020 to July 2020 alongwith interest @ 24% per annum

d) to pay to the Petitioner an amount of Rs. 3,51,60,000 towards remaining lock in period for Benchmark Revenue/Management and damages,

or

in the alternative secure and safeguard the said amount of Rs.5,07,90,000 by depositing the same in the form of Fixed deposit or bank guarantee before this Hon'ble Court.

e) to restrain from transferring , alienating or encumbering, in any manner whatsoever, any of the assets of the Respondent;

f) to attachment of the Bank Accounts and assets of Respondent, to be disclosed by the Respondent by way of an affidavit, being in its knowledge, for an amount of Rs. 5,07,90,000 ;

g) to pay the petitioner cost of the present petition.

Pass/make such other appropriate orders and/or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. Apropos prayer (a), Mr. Jayant Mehta, learned Counsel appearing for the respondent submits, on instructions, that his client had, in fact handed over peaceful and vacant possession of the property in dispute, to the petitioner, in March, 2020, save and except for the pantry areas on the ground and the first floors and one office/store room. He submits that his client is willing to hand over vacant and peaceful possession of the said pantry areas and the office/store room during the course of the day.

3. As such, submits Mr. Mehta, with the handing over of the aforesaid pantry areas and office/store room, the vacant and peaceful possession of the entire property in dispute would stand handed over to the petitioner.

4. Mr. Shivanshu Kumar, learned Counsel for the petitioner submits that he is willing to take possession of the areas of which possession has not been handed over to his client, within 24 hours, at a time to be fixed by this Court. He, however, disputes the submission, of Mr. Mehta, that possession of the remaining areas of the property was handed over in March, 2020 and submits that, according to him, possession would be handed over today or at the time fixed by this Court as aforesaid.

5. In any event, with the handing over of possession as undertaken by Mr. Mehta, prayer (a) in this petition would stand satisfied. This Court is leaving the question of the date on which possession was handed over open, and the parties would be at liberty to urge their respective pleas in that regard during the arbitral proceedings, if necessary and as advised.

6. Though Mr. Shivanshu Kumar submits that this Court may adjudicate on the remaining prayers in the present petition, in my opinion, the prayers (b), (c), (d), (e), (f) and (g) in this petition may appropriately be adjudicated upon, by the learned Sole Arbitrator, treating this petition as a petition under Section 17 of the 1996 Act. That apart, as this Court has already appointed a learned Sole

Arbitrator today, by consent of parties, so that, by operation of Section 9(3) of the Arbitration & Conciliation Act, 1996, the prayers in this petition would be required to be examined and decided by the learned Sole Arbitrator.

7. The present petition may therefore, be returned to the petitioner to be presented before the learned Sole Arbitrator, who would treat it as a petition under Section 17 of the 1996 Act and proceed to decide the same in accordance with law.

8. At this juncture, Mr. Shivanshu Kumar, exhorts this Court to seek leave to refer to various news reports and other documents as well as judicial orders passed by this Court in other proceedings against the respondent, to bring out the fact that the respondent is in a financially weak condition.

9. In my view, the said documents and material could, with equal felicity, be shown to the learned Sole Arbitrator, who would take them into consideration while examining the present petition, under Section 17 of the 1996 Act. The petitioner is at liberty to do so.

10. For the purposes of handing over of the property by the respondent to the petitioner, the respondent would visit the premises of the petitioner tomorrow i.e. 31st July, 2020 at 11 a.m.

11. The present petition stands disposed of in the above terms and with the aforesaid directions.

I.A.5727/2020 and I.A.5728/2020 in O.M.P.(I) (COMM.) 189/2020

1. In view of the disposal of O.M.P.(I) (COMM) 189/2020, these applications are also stand disposed of.

C. HARI SHANKAR, J.

JULY 30, 2020/kr

