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

+ ARB.P. 418/2020 & I.A. 8522/2020

ELEGANZ INTERIORS PRIVATE LIMITED Petitioner

Through: Mr. Jatin Sehgal, Mr. Adhirath Singh, Mr. Madhav Narayan and Ms. Shikha Khurana, Advs.

versus

PREMIUM PORT LOUNGE MANAGEMENT
COMPANY PRIVATE LIMITED Respondent

Through: Mrs. Nanita Sharma, AOR with Mr. Vivek Sharma and Mr. Pankaj Chechi, Advs.

+ O.M.P.(I) (COMM.) 233/2020 & I.A. 6906/2020

ELEGANZ INTERIORS PRIVATE LIMITED Petitioner

Through: Mr. Jatin Sehgal, Mr. Adhirath Singh, Mr. Madhav Narayan and Ms. Shikha Khurana, Advs.

versus

PREMIUM PORT LOUNGE MANAGEMENT COMPANY
PRIVATE LIMITED Respondent

Through: Mrs. Nanita Sharma, AOR with Mr. Vivek Sharma and Mr. Pankaj Chechi, Advs.

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

O R D E R (O R A L)

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12.10.2020

(Video-Conferencing)

1. ARB.P. 418/2020 is a petition, preferred under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”), to appoint a sole arbitrator to adjudicate on the disputes between the parties.

2. Learned counsel for the parties are *ad idem* that, in view of this petition having been filed, seeking the appointment of a sole arbitrator, O.M.P.(I) (COMM.) 233/2020 could be converted into a petition under Section 17 of the 1996 Act and be referred to the learned sole arbitrator to be decided in accordance with law.

3. A brief overview of the disputes, as presented by the petitioner, may be set out thus:

(i) In October, 2019, the respondent approached the petitioner, requisitioning the petitioner's services for construction/renovation of the Plaza Premium Lounge at Level-E, Domestic Departure, , Rajiv Gandhi International Airport, Shamsabad, Hyderabad.

(ii) Even before the issuance of any formal work order, it is averred that the petitioner commenced operations, in accordance with the requirement of the respondent, from November, 2019 and that, by March, 2020, a substantial amount of the work had been completed.

(iii) A formal work order was executed on 18th March, 2020, for an aggregate sum of ₹ 4,35,01,150/-, exclusive of taxes. The date of completion of work was 23rd May, 2020.

(iv) It is averred that, owing to the nation-wide lockdown and other restrictions imposed consequent to the COVID-2019

pandemic, the petitioner, for reasons beyond its control, was unable to carry out any work from 24th March, 2020 till 1st June, 2020.

(v) Consequent to the partial lifting of the lockdown, it is stated that the respondent requested the petitioner to propose a revised schedule, which was provided by the petitioner.

(vi) It is alleged that the respondent failed to provide any response, *qua* safety measures and Standard Operating Protocols (SOPs) to be set in place by the respondent, thereby preventing the petitioner from effectively deploying staff and workers at the project site. In the process, it is alleged that the additional costs were also incurred by the petitioner. Despite attempts to discuss these matters with the respondent, nothing fruitful resulted.

(vii) The petition asserts, further, that the respondent starting levelling allegations, complaining of default on the part of the petitioner. Needless to say, the petition disputes these allegations.

(viii) On 10th July, 2020, a Notice of Default was issued by the respondent, to the petitioner, seeking to terminate the work order. The petition disputes the validity of this notice, to which a reply was addressed by the petitioner to the respondent on 13th July, 2020.

(ix) This was followed by a second notice, dated 19th July, 2020, by the respondent, to the petitioner, terminating the work order, alleging abandonment of the project by the petitioner.

(x) The petitioner responded to this notice on 22nd July, 2020. In the said response, the petitioner also claimed that an amount of ₹ 1,40,70,877/- was due, from the respondent to the petitioner.

(xi) Further communications took place between the parties, to which it is not necessary, for the limited purposes of this order, to allude.

(xii) The petition asserts, however, that, on 3rd August, 2020, the petitioner came to know that the respondent was engaging a third party vendor, to carry out work on the project, and, thereby, ousting the petitioner from the project site.

(xiii) The petitioner moved this Court, in the circumstances, *vide* O.M.P.(I) (COMM.) 233/2020, during the pendency of which, the petitioner came to know that a third party vendor, Suthar Interiors Pvt. Ltd, had been inducted by the respondent.

(xiv) A separate application, *vide* I.A. 7377/2020, under Section 9 of the 1996 Act, was, therefore, preferred by the petitioner before this Court in which, *vide* order dated 1st September, 2020, this Court allowed the respondent to provide

access to the petitioner to the project site, to carry out joint measurements, which, according to the petition, have been carried out.

(xv) As the disputes and differences between the parties were not being resolved, the petitioner issued a notice, to the respondent, on 15th August, 2020, calling upon the respondent to agree to the appointment of an arbitrator to adjudicate on the disputes between the parties, in terms of Clause 13 of the work order, dated 18th March, 2020.

4. 30 days having lapsed, since the issuance of the said notice and no arbitrator having been appointed by the respondent, the petitioner has approached this Court by means of the present petition.

5. Clause 13 of the work order reads thus:

“13. All Disputes and differences arising out of or in connection with this work shall in the first instance be settled amicably by mutual negotiation between the authorized representatives of both the parties herein failing which said disputes and differences shall be referred to arbitration by sole arbitrator to be appointed by Regional General Manager of CLIENT. The arbitration proceedings are to be conducted in accordance with the Arbitration and Conciliation Act, 1996 and/ or any statutory modifications thereof. The venue of such arbitration shall be at New Delhi and the award passed by the arbitrator shall be final and binding on the parties.”

6. Clearly, arbitrable disputes have arisen.

7. Learned counsel for the parties are *ad idem* that this Court may

appoint any retired District Judge/Additional District Judge, as the sole arbitrator to arbitrate on the disputes between the parties.

8. In view thereof, this Court appoints Mr. O.P. Saini, District & Sessions Judge (Retd.) (Mobile No. 9717196857) as the sole arbitrator to adjudicate on the disputes between the parties.

9. The Registry is directed to return, to the petitioner, O.M.P.(I) (COMM.) 233/2020 so that the petitioner could prefer the said petition as an application under Section 17 of the 1996 Act, before the learned sole arbitrator, who would consider the petition and dispose of it in accordance with law.

10. The respondent is also granted liberty to prefer any counter claims, as it may so choose, before the learned sole arbitrator, in accordance with law. Any such counter claim, if preferred, would also be decided by the learned sole arbitrator.

11. The learned sole arbitrator would be entitled to charge fees in accordance with the Fourth Schedule to the 1996 Act.

12. The parties are directed to contact the learned sole arbitrator at the aforesaid contact details, on 15th October, 2020 at 02:00 p.m., so as to fix a schedule for the arbitration.

13. The learned sole arbitrator would also furnish the requisite disclosure under Section 12 of the 1996 Act, within two weeks of

entering on the reference.

14. Both these petitions are disposed of, with no orders as to costs.

15. Pending applications, if any, also stand disposed of.

C. HARI SHANKAR, J.

OCTOBER 12, 2020

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