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

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Date of decision: 06.08.2021

- (i) + **ARB.P. 661/2021**
M/S SITAL DASS JEWELLERS & ANR.
- (ii) + **ARB.P. 665/2021**
M/S J.H. JEWELLERS & ANR.
- (iii) + **ARB.P. 667/2021**
M/S SITAL DASS SONS & ANR.
- (iv) + **ARB.P. 668/2021**
ABHUSHAN & ANR.
- (v) + **O.M.P.(I) (COMM.) 244/2021**
M/s SITAL DASS SONS & ANR.
- (vi) + **O.M.P.(I) (COMM.) 245/2021**
ABHUSHAN & ANR.
- (vii) + **O.M.P.(I) (COMM.) 248/2021**
M/s SITAL DASS JEWELLERS & ANR.
- (viii) + **O.M.P.(I) (COMM.) 249/2021**
M/s J.H. JEWELLERS & ANR.Petitioners

Through: Mr. P.K. Agrawal, Mr. Rishabh
Tomar & Ms. Sukriti Sinha,
Advocates

Versus

ASIAN HOTELS (NORTH) LTD. Respondent
Through: Mr. Sidhant Kumar & Ms. Manyaa
Chandok, Advocates

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

The hearing has been conducted through video conferencing.

1. The above captioned first four petitions have been preferred under Section 11(6) of Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrators for adjudication of disputes between the parties.
2. Since the relief sought by the petitioners in these petitions is more or less similar against a common respondent, therefore, with the consent of counsel for the parties, these petitions have been heard together and are being disposed of by this common order.
3. Petitioner No.1 in the above captioned first petition [ARB. P. 661/2021] is a proprietorship firm at L-81, Shopping arcade, Hotel Hyatt Regency, Bhikaiji Cama Place, New Delhi and petitioner No.2 is the proprietor.
4. In the third captioned petition, [ARB. P. 667/2021], petitioner No.1 is a partnership firm and petitioner No.2 is the partner of the firm, who are having their office L- 79, Shopping arcade, Hotel Hyatt Regency, Bhikaiji Cama Place, New Delhi.

5. Petitioner No.1/firm in first captioned petition and third captioned petition are similar. According to petitioner firm, on 01.09.1982 a license agreement along with a supplementary agreement was entered between petitioner (previously known as *M/s Virender Kumar & Co.*) and respondent in respect of shops in question, which was renewable every five years at the option of petitioner. The case of petitioner is that after change of name of petitioner/firm from *M/S Virender Kumar & Co.* to *M/S Sital Dass Sons*, an additional space adjacent to shop L-79 viz L-79 Extn. (Renumbered as L-81) (273 sq. ft.) in the same shopping arcade was granted by the respondent to *M/S Sital Dass Sons* vide supplementary agreement dated 10.08.1984 and the terms of original license agreement dated 01.09.1982 were to be read along with agreement dated 10.08.1984. Vide letter dated 01.01.1992, *M/S Sital Dass Sons* through its partners informed the respondent that they shall be operating under two different names i.e. *M/S Sital Dass Sons* represented by Rajendra Kumar Rakyan in shop No. L-79 (490 sq. ft.) and the other represented by Mr. Jitendra Rakyan in shop no. L-79 Extn. (Renumbered as L-81)(273 sq. ft.).

6. In the second petition [ARB. P. 665/2021], petitioner No.1 is a partnership firm and petitioner No.2 is the partner of the firm, at L-73,

Shopping arcade, Hotel Hyatt Regency, Bhikaiji Cama Place, New Delhi. Petitioner No.1 had entered into a license agreement as well as supplementary agreement, both dated 09.09.1992, with respondent in respect of shop in question, which was renewable every five years at the option of respondent, who had further vide letter dated 01.04.1996 transferred the ownership of the said shop from petitioner No.1 to petitioner No.2.

7. In above captioned fourth petition [ARB. P. 668/2021], petitioner No.1/firm who was earlier a partnership firm, by virtue of a dissolution deed dated 01.04.2015, became a sole proprietorship firm and petitioner No.2 as the sole proprietor, at L-78, shopping arcade, Hotel Hyatt Regency, Bhikaiji Cama Place, New Delhi. In respect of shop in question, a license agreement along with supplementary agreement both dated 18.02.1992 were executed between erstwhile petitioner/firm and the respondent, which was renewable every five years.

8. According to petitioners in these petitions, on the ground that the internal fittings of shopping arcade were nearly 40 years old and were in urgent need for repair and it was no longer financially profitable to continue with the shopping arcade, the respondent vide notice dated 29.05.2020 revoked the license in respect of shop No. L-79 extn (L-81); L-79, license L-

73 and L-78 w.e.f. 01.06.2020.

9. The petitioners contend that the petitioners were in exclusive possession of the shops in question and the aforesaid notice did not mention any violation of the terms and conditions of the license/lease agreement by petitioners. Further submitted that petitioners had right to carry on business at the hours suited to them and the license/lease could not have been terminated at the will of respondent.

10. Learned counsel for petitioners submitted that agreement dated 01.09.1982 contains an arbitration clause and, therefore, vide notice dated 23.03.2021, petitioners called upon respondent to concur in the appointment of Hon'ble Mr. Justice N.K. Mody (Retd.) as the sole Arbitrator or as nominee Arbitrator of petitioner/firm, however, since respondent has failed to concur with the appointment of aforementioned Arbitrator, the petitioners have approached this Court seeking appointment of Arbitrators in these petitions.

11. Learned senior counsel appearing for respondent submits that appointment of Arbitrator is not disputed, however, the above captioned petitions at serial No. (vi) to (viii), filed under the provisions of Section 9 of Arbitration and Conciliation Act be treated as the one filed under Section 17 of the Act, so that the subject matter of disputes can be given quietus in one

go by the learned Arbitrator, to be so appointed by this Court.

12. At this stage, counsel for petitioners fairly concedes that if the disputes *inter se* parties are being referred to one Arbitrator to arrive at just decision in these matters, petitioners have no objection to the aforesaid submission made by learned senior counsel for respondent and the petitions being O.M.P.(I) (COMM.) 244/2021; 245/2021; 248/2021 and 249/2021 be read under Section 17 of the Act.

13. It has been also brought to the notice of this Court that against illegal eviction of petitioners, they had preferred a civil suit CS(Comm)) 237/2020 before this Court for declaration and permanent injunction against the respondents, which was disposed of vide order dated 21.07.2020 as not maintainable in view of Arbitration clause between the parties. Since both the sides were aggrieved of certain observations made by the Court in the said order, it was challenged before the Division Bench [RFA (OS) (COMM) 12/2020]. Vide order dated 24.12.2020, the Division Bench allowed both the appeals and gave liberty to file a petition under Section 8 of the Arbitration and Conciliation Act before the Single Judge while directing that the interim arrangement between the parties before the learned Single Judge, that the respondent-Asian Hotels (North) Ltd. shall not take

any action against the petitioners, shall continue. Learned counsel for petitioners emphasizes that the interim arrangement so made by learned Single Judge and upheld by the Division Bench may continue till the Arbitrator enters into reference.

14. Learned senior counsel appearing on behalf of respondent submits that the aforesaid interim arrangement shall continue till the Arbitrator enters into reference.

15. Both sides have been heard and record of these petitions has been perused.

16. In view of contention raised by both the sides, petitions being O.M.P.(I) (COMM.) 244/2021; 245/2021; 248/2021 and 249/2021 shall be read under Section 17 of the Arbitration and Conciliation Act, 1996.

17. Pertinently, the agreement dated 01.09.1982 contains an arbitration clause, which reads as under:-

“11. That in case of any dispute, difference, between the company and you, with regard to any matter including interpretation of this agreement and the clarification thereof, the same shall be referred to the joint arbitration of the Chairman of the Company or any person appointed by the Chairman and the arbitrator appointed by you, whose decision shall be final and binding between the parties and shall not be questioned in any court of law.”

18. Petitioners have invoked arbitration vide notice dated 23.03.2021. The

arbitration agreement between the parties and invocation of arbitration are not disputed by the respondents. Hence, these petitions deserve to be allowed.

19. However, contention of petitioners to appoint Arbitrator of their choice is rejected, as no party can be permitted to unilaterally appoint an Arbitrator, as the same would defeat the purpose of unbiased adjudication of dispute between the parties. It has so been said in view of pertinent observations of the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.*** 2019 SCC Online SC 1517 wherein it has been categorically stated that “*in cases where one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator.*”

20. The afore-noted dictum of Hon'ble Supreme Court in ***Perkins Eastman (Supra)***, has been followed by Coordinate Benches of this Court in ***Proddatur Cable Tv Digi Services Vs. Siti Cable Network Limited*** 2020 SCC OnLine Del 350 and ***VSK Technologies Private Limited and Others Vs. Delhi Jal Board*** 2021 SCC OnLine Del 3525 in unequivocal terms.

21. Concurring with the decisions as noted above, the present petition is allowed.

22. Accordingly, **Mr. R. L. Meena, former Secretary, department of Law and Justice (Mobile: 9868601397)** is appointed the Sole Arbitrator to adjudicate the dispute between the parties.

23. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

24. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

25. Needless to say, all issues are left open for agitation by the parties and consideration by the learned Arbitrator. It is also made clear that till the Arbitrator enters into reference, the respondent-Asian Hotels (North) Ltd. shall not take any action against the petitioners.

26. With aforesaid directions, these petitions and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 06, 2021

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