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

+ **ARB.P. 402/2020**

OYO HOTELS AND HOMES PVT. LTD. Petitioner
Through: Mr. Satish Padhi, Mr. Jeevan
Ballav Panda, Ms. Shalini Sati Prasad, Ms.
Meher Tandon and Mr. Gaurav Sharma,
Advts.

versus

VIKAS MINERAL FOODS PRIVATE LTD Respondent
Through: Mr. M.P. Bhargava, Adv.

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

J U D G M E N T (O R A L)

% **04.02.2021**
(Video-Conferencing)

1. By this petition, preferred under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”), the petitioner prays for appointment of an arbitrator, to arbitrate on the dispute between the petitioner and the respondent.

2. The dispute arises out of a Management Service Agreement, dated 29th June, 2019 (hereinafter referred to as “the MSA”), executed between the petitioner and the respondent.

3. The paragraphs in the petition which, as per the petitioner, set out the dispute between the parties, are haphazardly numbered but, for ready reference, may be reproduced thus:

“9. In and around mid of 2019, the Respondent had expressed its interest in availing the services of Oravel Stays Private Limited (the "Erstwhile Company") and in pursuance of the same, the Respondent had made several representations to the Erstwhile Company regarding the Property. Subsequently, the Parties engaged in negotiations and entered into a Management Services Agreement dated 29 June 2020 ("MSA"). A copy of the MSA is enclosed herewith.

10. It is most humbly submitted that based upon the representations of the Respondent, the Erstwhile Company (now the Petitioner) had paid an Interest-Free Security Deposit ("IFSD") of INR 17,50,000 to the Respondent.

11. Some relevant extracts of the MSA are provided herein below for ready reference:

"Article 1 “/Approvals” shall mean licenses, NOC, approvals required as per laws and regulations to construct the Venue and to run the Venue for business purposes, i.e., banquet services, wedding services including but not limited to food and beverage services, catering, serving liquor to guests, approved/ sanctioned venue plans, commencement certificate, occupancy certificate or equivalent, Venue usage as per applicable law and regulation, NOC from fire authorities and electricity and water connections."

"Article 3: Term

3.1 This Agreement shall commence from Execution Date and shall be valid for a period of 5 years (five years) unless terminated earlier in accordance with Article 9 of this Agreement. The Parties shall extend the Term of this Agreement on mutual consent basis, in writing, and to be signed by the authorized representative of both Parties."

"4.2 The service provider shall on the commencement date deposit an interest free refundable security deposit (“IFRSD”) equivalent to Rs. 17,50,000 (Indian Rupees Seventeen Lakh Fifty Thousand only) under this agreement on the Commencement Date. IFRSD in

full, shall be refunded to the owner by the service provider on expiry/termination of this Agreement. Failing which, the service provider shall have the right to deduct equivalent amount from benchmark revenue payable by the Service Provider. The Service Provider shall have the right to continue to set off the IFRSD amount from the benchmark revenue till the time the entire IFRSD is recovered by the Service Provider in case the amount of the IFRSD to be recovered is more than the monthly benchmark revenue. It is clarified that the owner shall not be entitled to terminate this Agreement irrespective of expiry of the Owners lock in, till full security amount is recovered by the Service Provider"

"5.2 OWNER'S RIGHTS AND OBLIGATIONS

The Owner Shall:

5.2.5 Remain solely responsible and liable for all taxes, cess or duty, any ground rents, municipal taxes, real estate taxes, personal Venue taxes and assessments and any other charges in respect of the Venue/Venue that are payable in relation to the title of or use of the Venue or in relation to the business of providing banquet services on a commercial basis. In the event the Owner fails to pay such taxes or dues. due to which the Service Provider is hindered in any manner and therefore unable to fulfill its obligations under this Agreement including but not limited to not being able to provide Services in a smooth and efficient manner or the business at the Venue is getting disrupted or is threatened to be disrupted by relevant government authority through its action or inaction, the Service Provider shall have a right to make such payments due and have the right to recover such amounts from the Benchmark Revenue payable to the Owner under this Agreement."

"5.2.7 The Owner shall be solely responsible for obtaining Approvals, including but not limited to renewals of licenses, at its own cost, to enable the Service Provider to perform its obligations under this Agreement."

"ARTICLE 6: REPRESENTATIONS AND WARRANTIES

6.2 *The Owner has all necessary statutory and/or regulatory permission(s), approval(s), licenses and permits required for running and operating the Venue and conducting its business and for the providing of Services by the Service Provider."*

"ARTICLE 9: TERMINATION AND CONSEQUENCES OF TERMINATION

9.1.2 *Notwithstanding Article 9.1.1, Service Provider shall be entitled to terminate the Agreement anytime (including within the Service Provider's Lock-In Period) in the event: (a) there is a material breach of the Agreement by Owner or there has been a misrepresentation by Owner and Owner fails to rectify the said breach within a period of 30 (thirty) days from the date on which it is notified of the said breach; or (b) Owner files for bankruptcy or becomes or is declared insolvent or has a receiver or manager appointed over all or substantially all of its assets; (c) a proposal of land acquisition in respect of any material part of or all of the Venue being effected by any governmental body; or (d) there being a dispute or threat of a dispute concerning title of the Venue; or (e) If the lease deed or any other agreement vesting possession of the Venue on the Owner terminates; (f) If any act or omission of the Owner causes disruption in the business."*

"ARTICLE 10: DISPUTE RESOLUTION AND GOVERNING LAWS

10.1 *Arbitration: Any dispute arising out of this Agreement and the obligations thereunder ("Dispute") shall be finally settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The Parties agree that the Dispute shall be adjudicated by a mutually appointed single arbitrator. The arbitration*

proceedings shall be conducted in English language and seat of arbitration shall be at New Delhi."

12. Subsequently, Oravel Stays Private Limited transferred all its rights and obligations under the MSA to OYO Hotels and Homes i.e. the Petitioner. That this transfer of rights and obligations was categorically recorded in the addendum to the MSA dated 13 January 2020. A copy of the same has been enclosed herewith.

13. The Petitioner states that as per the MSA the Respondent was required to provide the Petitioner with all the licenses, NOC, approvals required as per laws and regulations to construct the Venue and to run the Venue for business purposes i.e. banquet services, wedding services including but not limited to food and beverage services, catering, serving liquor to guests, approved/ sanctioned venue plans, commencement certificate, occupancy certificate or equivalent, Venue usage as per applicable law and regulation, NoC from fire authorities and electricity and water connections. However, the Respondent has failed to provide the Petitioner with a copy of the relevant Approvals despite being given multiple opportunities.

8. Hence, the Petitioner was left with no option but to issue a breach and cure notice to the Respondent dated 16 March 2020. The relevant excerpt of the same has been reproduced below for ready reference:

"In spite of our follow-ups, till the date the following documents are pending at your end:

- 1. Approved Building Plan*
- 2. Occupancy certificate /Completion certificate.*
- 3. Renewed Fire NOC*
- 4. Trade License*
- 5. Copy of Insurance (as per clause 12.15)*
- 6. Receipts of the latest property tax"*

"That in view of the above and your continued breach continuing operations from the Venue without approval exposes OYO to risk of non-compliance which is against the law and policy of OYO and causes disruption in peaceful enjoyment of the Venue as per

the terms of the MSA. Moreover, your omission to procure approvals has not only caused significant inconvenience for day to day operations but it has also put the goodwill and reputation of OYO at stake."

"You are promptly called upon to obtain and provide Us with the abovementioned statutory/ regulatory licenses/ approvals/NOCs along with the copy of insurance, failing which the termination of the MSA shall become effective after the expiry of the business hours on 31st March 2020."

9. However, to the shock and surprise of the Petitioner, the Respondent failed to comply with the demands made under the letter dated 16 March 2020 and instead issued a response letter dated 29 March 2020 wherein the Respondent had disputed the contents of the Petitioner's letter dated 16 March 2020 in an attempt to escape from its liabilities and had incorrectly stated that it had duly complied with its obligations and provided copies of the Approvals that were sought by the Petitioner. Furthermore, the said letter was wrongly addressed to the officials of the Petitioner who were not involved in the entire matter.

10. Subsequently, the Petitioner responded to the letter dated 29 March 2020 vide its letter dated 30 March 2020 whereby the Respondent had reiterated the Respondent's failure to adhere with the terms of the MSA and had *inter alia* stated that *"We hereby finally call upon by way of this rejoinder to immediately cure the breach latest by 31st March 2020... failing which the termination of the MSA shall become effective after the expiry of the business hours on 31st March 2020."*

11. However, despite the aforementioned response the Respondent failed to fulfill its obligations under the MSA and to the shock and surprise of the Petitioner the Respondent issue a demand letter dated 1 April 2020 wherein the Respondent had *inter alia* alleged that the Petitioner had violated the terms of the MSA and maliciously claimed illegitimate and unsubstantiated amounts from the Petitioner. As a result, the Petitioner was constrained to issue a response to the Respondent on 14 April 2020 wherein the Petitioner had reiterated its stance and clarified that, given the

circumstances, there could be no scope or occasion for any claims by the Respondent. The relevant excerpt of the said letter is reproduced below:

"In the light of the facts and response stated above, You are again called upon to refund INR 4,67,95,833 (Indian Rupees Four Crores Sixty Seven Lacs Ninety Five Thousand Eight Hundred Thirty Three only) as detailed in Annexure A as per the terms and conditions of the MSA within 7 days from the date of receipt of this notice without any delay or demur, including but not limited to the amounts under lock-in payouts, Venue booking advance amount received by You, interest free refundable security deposit paid to You along with an interest of @ 18% p.a., without any deductions therefrom, for each day of delay until payment of aforementioned amount in pursuance of the terms and conditions of the MSA."

Annexure-A

Description	Amount (INR)	
Amount Outstanding:		
Benchmark Revenue for the month of February, 2020		8,75,000
Benchmark Revenue for the month of March, 2020		8,75,000
Total Rent		17,50,000
Less: Amount Recoverable		
1. Security Deposit	17,50,000	
2. Venue booking advance amount	1,00,000	
3. Lock-in-pay-outs	4,66,95,833	4,85,45,833
Net Actual Recoverable Amount		4,67,95,833

12. It is most humbly submitted that despite the aforementioned letter, the Respondent failed to comply with the legally valid demand of the Petitioner and instead issued another demand letter dated 16 April, 2020 wherein it has

inter alia demanded a baseless and unsubstantiated sum of INR 17,50,000. The contents of this letter were reiterated by the Respondent on 20 April, 2020 vide another letter. ”

(Paragraph numbering as per the petition)

4. Needless to say, the aforesaid paragraphs have been extracted from the petition only so as to set out the dispute as canvassed by the petitioner. The respondent would have every opportunity to traverse the allegations against him, as contained in the aforesaid paragraphs, before the arbitral tribunal, to be constituted by the present order.

5. The petition goes on to aver that, on 24th April, 2020, the petitioner addressed a legal notice to the respondent, to which the respondent replied on 22nd May, 2020.

6. The MSA contains the following provision, which provides for resolution of disputes by arbitration:

"ARTICLE 10: DISPUTE RESOLUTION AND GOVERNING LAWS

10.1 Arbitration: Any dispute arising out of this Agreement and the obligations thereunder ("Dispute") shall be finally settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force. The Parties agree that the Dispute shall be adjudicated by a mutually appointed single arbitrator. The arbitration proceedings shall be conducted in English language and seat of arbitration shall be at New Delhi."

7. Inasmuch as the parties have been unable to agree at the arbitrator who would arbitrate on the disputes between the parties, learned counsel are *ad idem* that this Court may proceed to appoint an

arbitrator, in exercise of the jurisdiction vested in it by Section 11(6) of the 1996 Act.

8. Learned counsel for the petitioner requests that the arbitrator should be someone other than the arbitrators named in the respondent's response dated 22nd May, 2020 *supra*, to the petitioner's legal notice dated 24th April, 2020 *supra*.

9. Accordingly, this Court proceeds to appoint Justice Rajive Bhalla (retired), an Hon'ble retired Judge of the High Court of Punjab & Haryana (Mobile No: 97800 08111), who is practicing in Delhi, as the sole arbitrator, to arbitrate on the disputes between the parties. The contact address of the learned arbitrator is as under:

Block D , House No. 52, Basement ,
Panchsheel Enclave Delhi- 110017
Email :- rajivebhalla1954@gmail.com
Phone No-011 41064945

Chandigarh Address
H.No.257 sector 10-A,Chandigarh

10. At joint request, the fees of the learned arbitrator are fixed in accordance with the Fourth Schedule to the 1996 Act.

11. The learned arbitrator would furnish the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

12. Learned counsel for the parties are directed to contact the learned arbitrator, within one week of being communicated a copy of this judgment to them by the Registry of this Court by e-mail.

13. At this stage, Mr. M.P. Bhargava, learned counsel for the respondent, requests the court to clarify that the present judgment would not have any effect on the proceedings arising consequent to FIR No. 0289, dated 11th September, 2020, registered at P.S. Dera Basski, Chandigarh.

14. Needless to say, the present judgment has nothing to do with the criminal proceedings pending between the parties, and is restricted to the prayer for appointment of an arbitrator.

15. The petition stands allowed in the aforesaid terms and to the aforesaid extent, with no orders as to costs.

C. HARI SHANKAR, J.

FEBRUARY 4, 2021

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