

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
APPLN. FOR APPOINTMENT OF ARBITRATOR
NO. 19 OF 2022**

Passive Active Tourism Pvt. Ltd. Thr. Its Aut. ... Applicant
Rep. Joseph Felizardo Graciano Barreto

Versus

Tej Malhotra & anr. ... Respondents

Mr. S. Malik, Advocate *for the Applicant.*

**CORAM: M. S. KARNIK, J
DATED: 19th JULY 2023**

ORAL ORDER

1. Heard learned counsel for the applicant.
2. The respondents were directed to be served pursuant to the issuance of notice by this court. The applicant filed an affidavit of service dated 11.07.2023. The office was directed to verify if the service is complete. The office report indicates that the affidavit filed by the Advocate for the applicant states that the respondents are duly served through the registered email address with the copy of the petition along with annexures and the order dated 13.03.2023 with a private notice indicating that the matter will be taken up for final disposal.
3. There is no appearance on behalf of the respondents.

4. I have heard the learned counsel for the applicant.

5. This is an application for appointment of a sole arbitrator under section 11 of the Arbitration and Conciliation Act, 1996. The applicant and the respondent had entered into a Marketing and Operational Consultant Agreement dated 28.11.2018 with the respondent in regard to the hotel property known as Jungle Book, situated at Bazarwada, Collem Dharbandora, Goa. In terms of the agreement, the respondent had agreed for a Monthly Assured Benchmark Revenue i.e. minimum guarantee as spelt out in paragraph 2 of the application. It is the case of the applicant that the respondent failed to provide for the assured benchmark revenue from the month of February 2019 till April 2019. By email dated 02.03.2019, the respondent had conveyed to the applicant that the monthly assured benchmark revenue has been revised on the basis of previous conversations which, according to the applicant, had never taken place. The applicant vide email dated 06.03.2019, objected to such revised monthly assured benchmark as the revision of monthly assured benchmark revenue was falsely imposed upon them without prior intimation for negotiation which is farce and in absolute non-compliance of the agreement dated 28.11.2018. By an addendum dated 28.11.2018 to the agreement dated 28.11.2018, it was expressly agreed vide clause 5 by the parties that in case the respondent i.e.

OYO is unable to achieve its minimum guarantee amount as per the agreement, OYO shall pay the Hotel the differential amount between actual gross revenue and the minimum guarantee.

6. According to the applicant, the respondent has failed to clear the dues within reasonable time, ignoring the terms and conditions of the agreement dated 28.11.2018. By email dated 30.03.2019, the respondent terminated the agreement dated 28.11.2018 by giving thirty days notice, instead of 45 days as per clause 21 of the agreement dated 28.11.2018. According to the applicant, five post dated cheques that were received by the respondent from the applicant at the time of execution of the said agreement are not yet returned. It is the case of the applicant that as per the agreement, the respondent has to pay total amount of ₹17,06,834/- for the months of February, March, April and 15 days of May 2019 and return all five post dated cheques to the applicant. A legal notice dated 22.06.2019 came to be issued. It was categorically stated that in case the respondent failed to clear the outstanding dues calculated in terms of the agreement dated 28.11.2018 the applicant would proceed with the appropriate proceedings including arbitration, as per clause 27 of the addendum, in the State of Goa, to recover the dues with 18% interest. Despite receipt of the notice, the respondent failed to clear the dues and honour the agreement. Notice was issued to the respondent by the applicant through the Lawyer for seeking an appointment of the

sole arbitrator Advocate Amey Kakodkar within thirty days of the receipt of the request. The applicant therefore had to approach this court for appointment of sole arbitrator. There is no representation on behalf of the respondent despite service of notice. The contract was entered in Goa and the scope of work was in Goa. The application therefore deserves to be allowed and accordingly is allowed.

7. In terms of clause 27 of the addendum to the agreement dated 28.11.2018, Advocate Amey Kakodkar is appointed as the sole Arbitrator.

8. Application is disposed of. No order as to cost.

M. S. KARNIK, J