

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

% **Date of order : 17th April, 2023**

+ **ARB.P. 131/2023**

FLEUR HOTELS PRIVATE LIMITED Petitioner

Through: **Mr. Sujoy C. Datta and Ms.**

Nishtha Khurana, Advocates

versus

M/S HIND INNS AND HOTELS LTD & ORS..... Respondents

Through: **Mr. Ajay K. Jain and Mr. Pulkit**

Agarwal, Advocates for R-1 and 2

Dr. Amit George and Mr.

Rayadurgam Bharat, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

The file is taken up today as 14th April, 2023 was declared as a public holiday on account of Birthday of Dr. B.R. Ambedkar.

1. The instant petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act, 1996”) has been filed on behalf of the petitioner seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. The petitioner is Fleur Hotels Private Limited having its registered office at Asset Area 6, Aerocity Hospitality District, New Delhi, 110037. The respondents are M/s Hind Inns and Hotels Ltd and M/s Hind Motors

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their registered office at 15, Industrial Area, Phase I, Chandigarh, 160002 and Delhi International Arbitration Centre (DIAC).

3. The parties executed a Lease Deed dated 25th April 2019, for the efficacious running of 'Red Fox Hotel' located at 15, Industrial Area, Phase 1, Chandigarh, for 30 years w.e.f. 1st June 2016. According to Clause 30.1 of the said Deed dated 25th April 2019, respondent no.3 was entrusted with the responsibility for the appointment of the sole arbitrator in case of any dispute between the parties.

4. After the execution of the Lease Deed, the Petitioner came into possession of the premises and started the operations of the hotel. However, due to the outbreak of Covid-19, a nationwide lockdown was imposed and the hotel industry was completely shut down. The said *force majeure* event led to a dispute between the parties and the petitioner terminated the Lease Deed dated 25th April 2019 vide Notice dated 24th May 2020 and issued various notices to the Respondent No. 1 and 2 requesting them to refund the Security Deposit of INR 10,00,00,000/- and an additional Security Deposit of INR 1,47,35,650/- totalling INR 11,47,35,650/-.

5. The petitioner addressed another letter dated 8th June 2020 to the respondents No. 1 and 2 whereby the petitioner conveyed its willingness to vacate and handover the possession of the premises on 12th June 2020 and once again sought refund of the security deposit.

6. Thereafter, the respondents No. 1 and 2 sent a Termination Notice dated 22nd December 2020. The petitioner contested the validity of the

Termination Notice dated 22nd December 2020 by way of reply dated 14th January 2021 and advised the respondents no.1 and 2 to withdraw the said purported Termination Notice. However, no reply was received from the respondents No. 1 and 2.

7. The respondents no. 1 and 2 sent a Legal Notice dated 6th March 2021 invoking Arbitration under Article 30.1 of the Lease Deed addressed to respondent no.3 and the Petitioner. Respondents no.1 and 2 sent a request for Arbitration to respondent no.3 under Rule 4.2 of the Delhi International Arbitration Centre (Arbitration Proceedings) Rules, 2018 dated 9th March 2021. Article 30.1 of the Lease Deed has been enclosed below:

“ARBITRATION

Any dispute or difference arising between the parties hereto regarding the construction, meaning or effect or obligation of the parties hereto under this Deed or any article thereof or matter or thing herein contained or as to the rights and liabilities of the parties hereto shall be referred to Arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996, or any statutory modifications or re-enactment for the time being in force. The Delhi International Arbitration Centre, New Delhi, will appoint the Sole Arbitrator and will conduct the Arbitration in accordance with its rules for conduct of Arbitration proceedings then in force and applicable to the proceedings. The seat and venue of arbitration shall be New Delhi, India. The proceedings shall be undertaken in English. The arbitration award shall be final and binding on the parties. Subject to the foregoing, the courts at New Delhi alone shall have the jurisdiction in relation to the disputes as mentioned herein before.”

8. The petitioner issued a Notice dated 27th September 2022 to the respondents No. 1 and 2 along with a copy to respondent no.3 invoking Arbitration under Article 30.1 of the Lease Deed with respect to its claim, *inter alia*, of the refundable security deposit. By way of the said notice, the petitioner clarified that the previous counterclaim filed by the petitioner stood withdrawn with the liberty to reintroduce the said claims in separate proceedings, in terms of Rule 34 of the Delhi International Arbitration Centre Rules, 2018 and Practice Directions dated 05.09.2019 issued by the Respondent No.3.

9. *Per contra*, learned counsel on behalf of the respondent vehemently opposed the averments made by learned counsel for the petitioner, however it is duly accepted that dispute in question are arbitrable in nature. It is also stated by the learned counsel for the respondent that there is no objection if the instant dispute is referred by the Court to a sole arbitrator.

10. As agreed on behalf of the parties, it is evident that the parties intend the Court to refer the disputes to arbitration, by appointing a sole arbitrator. In view of the request made by the parties, to resolve the dispute arising under the Agreement, the said disputes and differences arising between the parties are referred to arbitration, by appointing a sole arbitrator. Hence, the following Order:

ORDER

- (i) Justice (Retd.) Shiva Kirti Singh is appointed as a sole arbitrator to adjudicate the disputes between the parties which have arisen under

the Agreement between the parties;

- (ii) The learned sole arbitrator, before entering the arbitration reference, shall ensure the compliance of Section 12(1) of the Arbitration and Conciliation Act, 1996;
 - (iii) The learned sole arbitrator shall be paid fees as prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018 as amended vide notification dated 15th November, 2022;
 - (iv) At the first instance, the parties shall appear before the learned sole arbitrator within 10 days from today on a date which may be mutually fixed by the learned sole arbitrator; and
 - (v) All contentions of the parties are expressly kept open.
11. A copy of the order be forwarded to the learned sole arbitrator on the following address:
- Justice (Retd.) Shiva Kirti Singh
Phone No.- 9899016327
E-mail Id. – shivakirtisingh@gmail.com
12. The petition is disposed of in the aforesaid terms along with pending applications, if any. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 17, 2023

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[Click here to check corrigendum, if any](#)

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