

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

+ **FAO 212/2019, CM APPL. 23935/2019, CM APPL. 29729/2019**

Reserved on : 23.03.2023

Pronounced on : 09.05.2023

IN THE MATTER OF:

ITMA HOTELS INDIA PVT LTD

..... Appellant

Through: Mr. Abir Phukan and Mr. Vedant
Goel, Advocates.

versus

AWA LIGHTING DESIGNERS INC & ANR. Respondents

Through: Mr. Sanyam Saxena and Mr. Nubair
Alvi, Advocates respondent No.1.
Mr. Vijay Kaundal, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of present appeal filed under Section 37 of the Arbitration & Conciliation Act, 1996 (hereafter, referred to as the 'Act'), the appellant seeks to assail the order dated 12.02.2019 passed by learned ADJ in Case No. 11178/2016 whereby his application under Section 8 of the Act was dismissed.

2. Briefly, the relevant facts are that respondent No.1/plaintiff (hereafter, referred to as 'AWA') filed the underlying suit for recovery of money along with *pendente lite*, future interest and damages against the appellant/defendant No.1 (hereafter, referred to as 'ITMA') and

respondent No.2/defendant No.2 (hereafter, referred to as 'Park Hotel').

3. In the suit, AWA has claimed that it is in business of architectural lighting design and implementing lighting solutions for commercial, civic, cultural and residential projects. In October-November, 2010, it was approached by Park Hotel, through its Vice President Mr. Deepak Bali to provide its products and services for their hotel project namely 'The Park, Kochi'. It is specifically averred in the plaint that in the negotiations, Mr. Deepak Bali and Ms. Priya Paul represented 'Park Hotels'. A proposal dated 04.11.2010 was sent by AWA to Park Hotel. Later, ITMA participated in the discussions and negotiations since the operations of the hotel were managed by it for and on behalf of Park Hotel. It is further averred that on 29.01.2011, AWA also received a presentation from Park Hotel regarding the project.

Consequent to various discussions and meetings between AWA, ITMA and Park Hotel, a supply order dated 02.02.2011 outlining the project description, areas in scope and scope of work was issued by ITMA on its letter head. It was signed by Mr. Deepak Bali and also by Mr. Mathew, the Managing Director of ITMA in confirmation. The purchase order was statedly received by AWA from the office of Deepak Bali.

It is further averred that the goods were supplied by AWA along with services for the construction of the hotel. As the final invoices raised by AWA remained unpaid, communications were exchanged between the parties. Eventually, AWA filed the suit in question to claim unpaid amounts wherein a sum of USD 40,300 has been claimed jointly and severally against ITMA and Park Hotels.

4. Summons were issued in the suit, in response thereto, ITMA filed an application under Section 8 of the Act wherein it was claimed that the Agreement/Supply Order dated 02.02.2011 contained an arbitration clause which provided that all the disputes or controversies arising under this Agreement shall be subject to arbitration in accordance with the then existing rules and regulations of the Indian Arbitration Association. In the application, ITMA sought reference of dispute for arbitration. Park Hotel denied its liability on the ground that it was merely coordinating for overall monitoring of the construction of the proposed hotel. On the same plea, Park Hotel denied that it is party to arbitration agreement between AWA and ITMA and submitted that claim be referred to arbitration without making it a party to such reference.

5. Although AWA has contested the stand taken by Park Hotel, in the present proceedings learned counsel, on instructions, stated its no-objection provided that all the parties are referred to the arbitration.

6. Having heard learned counsels for the parties, this Court takes note of the fact that the agreement-cum-supply order dated 02.02.2011 was signed by Mr. Deepak Bali, who, indisputably, is the Vice President of Park Hotel. Arbitration agreement is part of the supply order, which has been signed by Mr. Bali. At this stage it is not a relevant consideration before this Court that Park Hotel has denied its liability on merits.

7. In Vidya Drolia and Others v. Durga Trading Corporation reported as **(2019) 20 SCC 406**, the Supreme Court has mandated that the scope of enquiry under Section 8 is limited to finding the existence of arbitration agreement between the parties. Court is bound to refer a dispute for arbitration unless there are very apparent jurisdictional reasons for denying the reference. The present case is not the one where

the claim in question is a “dead wood” and it will be futile to refer the claim for arbitration. Merits of the Park Hotel’s defence to deny their legal liability to pay outstanding invoices of AWA can’t be looked into by this Court at this stage.

8. In view of the above, this Court is of the considered opinion that prima facie, existence of arbitration agreement is established. AWA may take steps in accordance with clause 9(C) of agreement-cum-supply order dated 02.02.2011 for appointment of Arbitrator Tribunal. Parties are free to raise all claims/counter-claims, if any, before the Arbitral Tribunal.

9. Accordingly, ITMA’s application under Section 8 of the Act is hereby allowed. This appeal is disposed of in the aforesaid terms. Pending applications also disposed of as infructuous.

10. Needless to state that Park Hotel is free to object to the jurisdiction of the Arbitral Tribunal under Section 16 of the Act on its plea of non-existence of arbitration agreement between it and AWA. It is clarified that all observations in this order are a prima facie opinion of this Court.

(MANOJ KUMAR OHRI)
JUDGE

MAY 09, 2023

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