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

\+ O.M.P.(I) (COMM.) 67/2024

INDUS TOWERS LIMITED ..... Petitioner

Through: Mr. Shashank Garg, Advocate *via* video-conferencing.

versus

HOTEL CORPORATION OF INDIA ..... Respondent

Through: Mr. A. P. Singh, Advocate *via* video-conferencing with Mr. Varnit V. Advocate.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% **27.03.2024**

I.A. 4919/2024

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

Application stands disposed of.

O.M.P.(I) (COMM.) 67/2024

Further to what was recorded in orders dated 01.03.2024 and 15.03.2024, Mr. A. P. Singh, learned counsel appearing for the respondent submits that his instructions are, that the petitioner should appear before a committee of officers of the respondent, in order to resolve the matter relating to removal of the petitioner's telecommunication equipment from the respondent's premises.

2. Mr. Shashank Garg, learned counsel appearing for the petitioner submits that despite sufficient time and opportunity having been given, the respondent has offered no cogent answer as to why the petitioner is not being permitted to remove its sophisticated telecommunication

equipment which is lying in the respondent's premises in a state of desuetude.

3. Mr. Garg submits, that there is no dispute that the two agreements dated 20.09.2016 and 18.10.2018 ('agreements') that are subject matter of the present petition have expired by efflux of time and that the petitioner's telecommunication equipment has been lying in the respondent's premises for no reason, and is now also exposed to damage and dilapidation, by reason of it not being used.

4. Mr. Garg draws attention to clauses 37 and 38 of the agreements, which read as under :

> *"37. The Licensee shall forthwith take out their installations and other paraphernalia and will have no right to occupy and to carry on business on the said site.* ***The Licensee shall forthwith remove themselves, their equipments/antenna, temporary structure etc. and hand over the vacant and peaceful possession of the said site and Licensee shall have no right to enter the site****. The Licensee shall forthwith pay all the amounts due and payable by them under this Agreement before leaving the site on expiry/termination of this license as aforesaid.* ***If the Licensee does not remove themselves its antennas etc. and belongings from the site on the date of expiry or termination of the license as aforesaid the Licensee shall pay to the Licensor damages at the rate of Rs.10.000.00 (Rupees ten thousand only) for each day of such unauthorized occupation in addition to monthly rental for each day of such unauthorized occupation.*** *In the event of termination of the license or the Licensee committing breach of any of the terms and conditions of this Agreement the Licensee shall not claim or be entitled to any refund of license fees or service charges paid in advance.*
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> *"38. On the termination or expiry of the License, the Licensee shall not have the right to enter the site of the Licensor* ***except for the purpose of removing their goods within reasonable period with permission of the Licensor*** *and in the event of the Licensee not removing their materials from the site within 30 days of such termination,* ***the Licensor is entitled to dismantle all the installations and dispose off the material at the sole discretion of***

the Licensor *and the Licensee will not claim any damages, costs etc., from the Licensor"*

(emphasis supplied)

5. Mr. Garg argues that clause 38 of the agreements in fact enjoins the petitioner to remove its equipment from the respondent's premises upon expiration of the agreements, and for that purpose, to enter upon the respondent's premises with its permission; and in the event the petitioner does not do so within 30 days of expiration/termination of the licence, the respondent is entitled to dismantle and dispose-of such equipment.

6. Attention is also drawn to clauses 28, 29 and 30 of the agreements, which read as follows :

> *"28. The* ***Licensor shall not be responsible for any loss or damage to the belongings of the Licensee*** *or of their employees or representatives on the premises arising from any cause whatsoever.*
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> *"29. The Licensee shall pay to the Licensor all legal charges and shall keep the Licensor fully indemnified against all costs, charges, expenses which the Licensor may incur through or on account of any breach or non-performance of any of the terms and conditions herein contained and in connection with this agreement.*
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> *"30.* ***The Licensor shall not be responsible for any injury or damage done to the person or agent, servant or workmen of the Licensee or to any goods or property of the Licensee*** *which may be concerned or be lying on the site by fire, rain, ants,* (sic) *leakage or bursting of water or gas pipe or electricity or accidental giving way of any portion of the Hotel building or from theft* ***or from any cause whatsoever.****"*

(emphasis supplied)

7. In fact, it is pointed-out that clause 29 provides that the respondent may even demand from the petitioner costs, charges and expenses that the respondent may incur on account of any breach or non-performance of any of the terms and conditions of the agreements, while at the same time clause 30 says, that the respondent shall not be responsible for any damage to any goods or property of the petitioner by reason of fire, rain, ants, leakage, or bursting of water or gas pipe or electricity, or any other accidental damage to the hotel premises or by theft.

8. Mr Garg submits, that therefore, the respondent would also not be liable for any loss or damage that the equipment may suffer by reason of lying in the respondent's premises " ..... *from any cause whatsoever*'.

9. Furthermore, it is submitted that the respondent is holding a sum of about Rs. 02 crores towards interest-free security deposit in terms of clause 10 of agreement dated 20.09.2016, which would more than take care of any possible claim or counter-claim that the respondent may have against the petitioner.

10. It is pointed-out however, that so far, the respondent has taken no steps to raise such claim or counter-claim against the petitioner, since evidently, the respondent has no claim against the petitioner.

11. Mr. Garg has also drawn attention of the court to section 3 of the Indian Wireless Telegraphy Act 1933, to urge, that in fact no person is entitled to possess wireless telegraphy apparatus *except* under and in accordance with a license issued under that statute; and that therefore, the possession of the petitioner's telecommunication equipment by the respondent is, to that extent, also illegal.

12. On the other hand, Mr. Singh submits that though the respondent is interested in negotiating a possible resolution of the dispute with the petitioner, the resolution should be a holistic one, and until then, no order be passed in relation to the telecommunication equipment lying at the respondent's premises.

13. Mr. Singh further submits, that having filed the present petition under section 9 of the A&C Act, the petitioner has thereafter taken no steps for appointment of an arbitrator, as of now.

14. Upon considering the rival contentions advanced by learned counsel for the parties, this court is unable to discern any rationale or cogent reason as to why the telecommunication equipment belonging to the petitioner, should continue to lie in the respondent's premises, when (i) admittedly the agreements have long expired by efflux of time; (ii) the respondent has no interest, right or lien over the equipment; and in fact, (iii) the contractual provisions enjoin the petitioner to remove its equipment from the respondent's premises forthwith upon expiration or termination of the agreements, failing which the respondent is even entitled to dismantle and dispose-of the equipment; and (iv) the respondent is not even liable for any loss or damage that may be caused to the petitioner's equipment. Importantly, the respondent has so far laid no claim or demand against the petitioner, muchless against the equipment.

15. Considering the reasons advanced on behalf of the petitioner for return of the equipment, this court is persuaded to permit the petitioner to remove its telecommunication equipment from the respondent's premises within 04 weeks from today.

16. To that end the petitioner shall give a 10 working-day advance written notice to the respondent; in response to which, the respondent would indicate the appropriate date and time at which the equipment can be dismantled and removed by the petitioner, affording to the petitioner sufficient time to do so, without causing any interference in the operations of the respondent's hotel.
17. The respondent is directed to co-operate in the process, failing which the petitioner is at liberty to seek police assistance from the concerned police station.
18. Furthermore, in order to forestall any factual disputes at a later stage, parties are directed to inventorise and document the condition of the equipment at the time of removal. To this end, parties shall prepare an inventory of the equipment, and document its condition by taking appropriate photographs/videographs at the time that it is dismantled and removed by the petitioner. The inventory and photographs/videographs so made shall be signed by the representative(s) of both parties who are present at the relevant time.
19. As recorded in order dated 15.03.2024, the petitioner has in fact expressed that the disputes between the parties be referred to arbitration, in the present proceedings itself.
20. Upon a conspectus of the contents of the petition and the submissions made, it is noticed that clause 42 of the leave and licence agreements comprise an arbitration agreement between the parties; and though no 'seat' or 'venue' of arbitration has been stipulated in that clause, there is no dispute that both parties are situate in Delhi and that the

agreements from which the disputes have arisen were also executed and performed at Delhi.

21. Though the arbitration agreement between the parties contemplates that the Managing Director of the respondent shall be the Sole Arbitrator in the matter, there is no cavil that in view of the judgement of the Supreme Court in ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd***[1], such clause is void and unenforceable.

22. At this stage, learned counsel appearing for the respondent also submits that considering the order passed, the parties be referred to arbitration in the present proceedings, without prejudice to all claims and counterclaims that the parties may wish to raise.

23. Accordingly, **Mr. Raj Panjwani, Senior Advocate (Cellphone No.: +91 9810306138)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties

24. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.

25. The learned Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Arbitrator.

26. Parties shall share the arbitrator's fee and arbitral costs, equally.

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[1] (2020) 20 SCC 760

27. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

28. Parties are directed to approach the learned Arbitrator appointed within 02 weeks.

29. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.

30. The petition stands disposed-of in the above terms.

31. Other pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 27, 2024

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