

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/PETN. UNDER ARBITRATION ACT NO. 23 of 2019

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LORDS INN HOTELS AND DEVELOPERS LTD.
Versus
RAYSONS RESIDENCY PVT. LTD.

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Appearance:

JAY R SHAH(8428) for the Petitioner(s) No. 1
MR MAUNISH T PATHAK(5892) for the Petitioner(s) No. 1
MR GM AMIN(124) for the Respondent(s) No. 1
MR SIRAJ R GORI(2298) for the Respondent(s) No. 1

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
ARAVIND KUMAR**

Date : 10/06/2022

ORAL ORDER

1. Heard learned counsel appearing for the petitioner. Perused the case papers.

2. This is a petition filed under sub-section (6) of Section 11 of the Arbitration and Conciliation Act 1996 for appointment of a sole arbitrator contending *inter alia* that petitioner and respondent had entered into an agreement on 17.2.2011 and it was agreed that any dispute arising under said agreement would be resolved through arbitration. It is contended by petitioner that on account of respondent having unilaterally cancelled the said agreement, a dispute in that regard has arisen between them and same is to be resolved through arbitration as agreed and as such, notice dated 8.10.2018 was issued calling upon the respondent to concur with the appointment of a sole arbitrator out of the three names proposed thereunder and despite receipt of

said notice, respondent did not appoint any arbitrator and as such, it has given cause of action for the petitioner to approach this Court for appointment of a sole arbitrator. Hence, learned counsel appearing for the petitioner by reiterating the grounds urged, pleas advanced in the petition seeks for appointment of a sole arbitrator.

3. Respondent on being notified, has appeared and filed their reply affidavit contending *inter alia* that the agreement dated 17.2.2011 was only for a period upto five years and it has stood extinguished by virtue of the same, there exists no right in the petitioner to seek for enforcement of the arbitration clause under the said agreement. Though reply affidavit has been filed and the respondent is represented by their advocates, they have remained absent.

4. Since the petition is of the year 2019 and the arbitration proceedings requiring it to be concluded expeditiously, it would not be just, fair and proper for a petition filed under section 11(6) of the Act to be kept languishing before the court for three years. As such, even in the absence of the respondent's counsel, this Court has persuaded to dispose of this petition by perusing the defence set up by the respondent and examined as to whether there is any merit in its defence to accept the same for not appointing an arbitrator and answer to the said contention will have to be in the negative for the reasons indicated herein below.

5. The agreement dated 17.2.2011 produced along with the petition which was entered into between the

petitioner and the respondent, was to permit the petitioner to operate the restaurant owned by the respondent on certain terms and conditions. The said agreement was for the period from 17.2.2011 to 16.2.2016. The respondent in their reply have attempted to stave off the claim of petitioner for appointment of an arbitrator on the ground that said agreement has stood extinguished or in other words, there exists no privity of contract between the parties so as to enable the petitioner to invoke the arbitration clause. However, a plea has been raised by the petitioner not only in the petition but also in the reply notice to the effect that by mutual consent, the said agreement / contract was extended for another five years from 17.6.2016 to 16.2.2021. These are all disputed questions of fact which cannot be gone into in an adjudication of a petition filed under section 11(6) of the Act. All these issues including arbitrability can be examined by the Arbitral Tribunal itself. When the arbitration clause 23.1 which is to the following effect is read in this background.

“If any dispute, difference, claim or question shall arise between the parties hereto touching this Agreement or any claim or thing contained in this Agreement or the construction of any article or section of this Agreement or as to any matter in any way connected with or arising out of this Agreement or the operation thereof or the rights, duties and liabilities of either party in connection with this Agreement including the difference agreed to be specially referred to arbitration under any Article then and every such case, unless the parties concur in the appointment of a single arbitrator, the matter in difference shall be referred to two Arbitrators, one to be appointed by each party to the difference, in accordance

with and in all respect in conformity with the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force and the award of such Arbitrator or the Arbitrators of their Umpire shall be binding upon the parties hereto. The venue of such Arbitration shall, unless otherwise agreed to between the parties be at Ahmedabad. The Appointment of the Umpire will be made according to the Arbitration & Conciliation Act 1996.”

it leaves no manner of doubt in the mind of this Court that parties have agreed that all claims, disputes, differences and questions which arise between them touching the agreement would be resolved through arbitration and as such, issue relating to contract having been renewed as per the contention of the petitioner and denied by the respondent are required to be examined, adjudicated and resolved by the arbitral tribunal itself. In that view of the matter, the contentions raised by the respondent in their statement of reply cannot be accepted and it stands rejected. For the reasons aforesaid, this Court proceeds to pass the following order.

ORDER

- (i) Petition is allowed.
- (ii) Hon'ble Justice A.G.Uraizee (Retired), former Judge of the High Court of Gujarat, residing at 3, Judges Bungalows, Dhuliakot, Near Law Garden, Ellisbridge, Ahmedabad is hereby appointed as the sole Arbitrator to resolve the disputes between the parties in accordance with the

Arbitration Centre (Domestic and International), High Court of Gujarat Rules, 2021. Both Parties would be governed by said Rules.

(iii) Registry to communicate this order to the sole Arbitrator forthwith by Speed Post. No order as to costs.

H.M. PATHAN

(ARAVIND KUMAR,CJ)

