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

% Judgment delivered on: 28th April, 2022

+ ARB.P. 332/2020

OYO HOTELS AND HOMES PVT. LTD. Petitioner

versus

PARVEEN JUNEJA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Jeevan Ballav Panda, Ms. Shalini Sati Prasad and Ms. Mehar Tandon, Advocates (through VC)

For the Respondent: Mr. Manish Vashisht, Senior Advocate with Mr. P.K. Rawal and Mr. Manashuy Jha, Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner seeks reference of disputes to a Sole Arbitrator under a Lease Deed dated 23.10.2019.
2. Learned counsel for the petitioner submits that the lease deed, particularly Clause 12.9 refers to an additional document being an Assets Purchase Agreement dated 23.10.2019 which has also been executed between the parties. Learned counsel submits that both the documents contain a similar arbitration clauses and disputes have

arisen and they are liable to be referred to a Sole Arbitrator.

3. Learned Senior Counsel appearing for the respondent disputes the contentions and submits that the lease deed itself stipulates that the property has been handed over on 'as is where is basis' and further submits that the respective obligations under the Assets Purchase Agreement have been duly performed and as such there is no dispute surviving that is referable to the arbitration.

4. Learned Senior Counsel submits that claim is a mere deadwood and as such cannot be referred to an Arbitral Tribunal.

5. I am unable to accept the contentions of learned Senior Counsel for the respondent for the reason that the claim sought to be raised in the petition are over and above the Assets Purchase Agreement and also refer to certain obligations that were allegedly required to be performed by the respondent and have not been performed leading to the termination of the agreement on account of the alleged defaults of the respondent.

6. In any event, a petition under Section 11 of the Arbitration & Conciliation Act, 1996 this Court is not to go into the merits of the claim or the counter-claim, if any, of the parties. This Court has to examine as to whether there is an arbitration agreement between the parties and there are any disputes unless *ex facie* it is apparent from the

record that the disputes are a mere deadwood.

7. There is no dispute that the lease deed as well as the Assets Purchase Agreement dated 23.10.2019 were executed by the parties. Both the agreements contain an arbitration clauses requiring the disputes to be referred to arbitration.

8. Whether the claim of the petitioner survives or has been duly satisfied is an issue that will be required to be adjudicated upon by the Arbitration Tribunal.

9. Reliance placed by the Senior Counsel for the respondent on the judgment of the Supreme Court in “*M.R. Engineers & Contractors Pvt. Ltd. versus Som Datt Builders Ltd. (2009) 7 SCC 696*”, is misplaced for the reasons the issue involved in the said judgment were with regard to incorporation of an arbitration agreement by reference in terms of Section 7 of the Arbitration & Conciliation Act, 1996.

10. In the present case, both the lease deed as well as the Assets Purchase Agreement contain similar arbitration clauses. Further, the lease deed specifically stipulates that parties have entered into an Assets Purchase Agreement which was attached as a Schedule-H to the lease deed.

11. This is not a case where the petitioner by implication seeks incorporation of an arbitration clause in an agreement which does not

contain an arbitration clause. Said judgment is clearly not applicable to the facts of the present case.

12. Accordingly, without prejudice to the rights and contentions of the parties, petition is allowed and the disputes are referred to arbitration.

13. With the consent of the parties, Mr. Justice Vikramajit Sen, former Judge of the Supreme Court of India (Mobile # +91 8447333366; +91 9818000290; email: senvikramajit@gmail.com) is appointed as the Sole Arbitral Tribunal to adjudicate the claims and counter-claims, if any, of the parties.

14. The fees of the learned Arbitrator shall be as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

15. The Arbitrator shall furnish the requisite disclosure under section 12 of the Arbitration and Conciliation Act, 1996 within two weeks of entering reference.

16. Petition is disposed of in the above terms.

17. Learned counsel for the petitioner submits that petitioner has also filed a petition under Section 9 being O.M.P. (I) 112/2021 and petitioner would like to withdraw the said petition reserving the right of the petitioner to approach the Arbitral Tribunal under Section 17 of

the Arbitration & Conciliation Act, 1996.

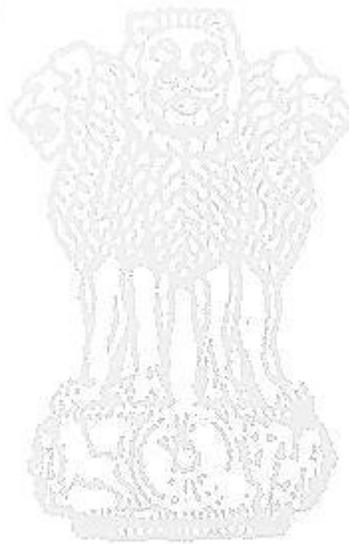
18. In view of the above, Registry is directed to list the petition O.M.P. (I) 112/2021 for 29.04.2022.

SANJEEV SACHDEVA, J

APRIL 28, 2022

'rs'

HIGH COURT OF DELHI



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