

(2001) 08 DEL CK 0216

In the Delhi High Court

Case No : AA No. 21/98

M/s Fortune Park Hotels Limited

APPELLANT

Vs

M/s U.G. Hotels and Resorts Limited

RESPONDENT

Date of Decision : 27-08-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(4)

Citation : (2001) 08 DEL CK 0216

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : Mr. Anil K. Kher, for the Appellant;

Judgement

V.S. Aggarwal, J.—This is a petition filed by M/s Fortune Park Hotel Limited under sub Section (4) to Section 11 of the Arbitration and Conciliation Act, 1996. The facts alleged are that the petitioner is a company incorporated under the Companies Act. Respondent M/s ITC Hotels Limited had signed and executed an operating, marketing and technical services agreement dated 31st October, 1995 whereby ITC Hotels Limited had been given the right to provide operational and other services for Shilon Resort at Shimla owned by the respondent. Under the said agreement ITC HL was to receive 7% on the gross operational income. The ITC HL transferred and assigned the said agreement in favor of the applicant. Accordingly, the applicant has been operating the said Resort from 20th November, 1995. The applicant provided the best services and efforts. It is alleged that in spite of clear terms of the agreement respondent never allowed a free hand to the applicant and raised one or the other frivolous issue on the subject and were interfering with the operation of the hotel and were hampering the smooth functioning of the hotel. It was interfering in day to day affairs in the management of Resort, not providing work capital and criticising the applicant in front of the employees. The respondent is alleged to have not paid the service charges from 1.10.1996 to 3.5.1997. In addition to that it is asserted that applicant is entitled to claim the loss of revenue suffered by it due pre matured

termination of the agreement and is also liable to pay Rs. 10 lacs towards liquidated damages.

2. As per the petitioner there was an arbitration agreement between the parties that in case any disputes arise between the parties touching these present or construction of the agreement thereto the parties may concur on the appointment of a single arbitrator, in otherwise it can be referred to arbitrators one can be appointed by each party. Disputes having been arisen as referred to above the petitioner had issued a legal notice to the respondent to nominate the arbitrator but it has failed to comply with the same. Hence the present petition.

3. Reply has been filed and petition as such has been contested. It has been asserted that the registered offices of both the petitioner and respondent are not in Delhi and, Therefore, this Court has no jurisdiction to entertain the petition. Plea has further been raised the petitioner has filed a copy of the agreement between the respondent and the ITC Hotels there is no document to establish that either the ITC Hotels had assigned the agreement or were capable of assigning their rights under the agreement and if it has been accepted by the petitioner.

4. Rejoinder was filed by the petitioner. It has been pointed that registered office may not be situated within the local limit of this Court the parties had agreed that the disputes shall be referred to within the jurisdiction of Courts at Delhi. The agreement was also signed at Delhi and, Therefore, the Court at Delhi had the jurisdiction.

5. The matter was listed for arguments but there was no appearance on behalf of the respondent in that view of the matter this Court did not have the advantage of hearing the learned counsel for the respondent.

6. The existence of the agreement dated 31st October, 1995 as such has not been disputed in the pleadings of the parties nor countered. Perusal of the said agreement reveals that it was executed on 31st October, 1995 and had been executed at Delhi. Since the agreement had been executed at Delhi the cause of action, if any, could also arise within the jurisdiction of this Court and, Therefore, it must be held that this court has the jurisdiction to entertain the petition.

7. The only other controversy raised has been if the matter as such had been assigned to the petitioner or not. The letter of 25th April, 1996 in this regard provides the answer and reads:-

April 25, 1996

"M/s U.G. Hotels Limited 3406, D.B. Gupta Road, Karolbagh, New Delhi 110005

Sub : OPERATING, MARKETING AND TECHNICAL SERVICES AGREEMENT DATED 31ST OCTOBER, 1995 Dear Sirs,

We have now incorporated a subsidiary Company with the name Fortune Park Hotels Limited to provide services to the hotels under the Fortune brand name.

As such pursuant to Clause 11 of Article XIX of the said agreement dated 31st October, 1995, we are hereby assigning the above referred agreement to the said subsidiary Company to provide you the services contemplated in the said agreement.

M/s Fortune Park Hotels Limited have signed this letter as a token of their confirmation to adopt the said agreement and undertake the obligations mentioned therein. In future, M/s Fortune Park Hotels Limited shall provide you all the services as contemplated in the said agreement against the fee reserved and the agreement shall be deemed to have been executed by M/s Fortune Park Hotels Limited for all intents and purposes.

Kindly acknowledge the receipt.

for ITC HOTELS LIMITED

sd/-

CONSTITUTED ATTORNEY

We hereby confirm the above and agree to take over all obligations under taken by ITC Hotels Limited under the Agreement dated 31st October, 1995 for the fee reserved.

for FORTUNE PARK HOTELS LIMITED

sd/-

DIRECTOR"

8. It clearly shows that the petitioner had taken over all obligations taken by ITC Hotels Limited. As such it gets fortification from the letter of the respondent. addressed to the petitioner dated 9th May, 1997. It reads as under:-

"Dear Sirs,

An Operating, marketing and Technical Services Agreement was entered into between M/s ITC Hotels Ltd. (hereinafter referred to as ITC) and us on 31st October, 1995 whereby ITC had agreed to undertake operating, marketing and technical services as per their obligations under the said Agreement. M/s ITC, vide their letter dated 25th April, 1996 assigned their obligations, responsibilities and rights under the said agreement to you.

2. We had been repeatedly writing to you, bringing to your notice various deficiencies and failures on your part in meeting the said obligations and responsibility assigned to you under the Agreement. Specific instances had been pointed out by in our letters dated 31st October, 1996, 13th January, 1997 and 27th January, 1997 whereby we had asked you to rectify/cure such failure and deficiencies but in fact these "effects and deficiencies had been increasing day by day despite of our pointing out to you from time to time.

3. In view of the above in terms of Art. XIII (5) (ii) & (iii), we hereby terminate the said Operating, Marketing and Technical Services Agreement with immediate effect. We further call on you to recall your General Manager stationed at Shilon Bagh (H.P.) and settle the accounts due and owing between the parties within sixty days from the date of termination of the agreement in terms of Clause 7 of Art. XIII of the said Agreement.

4. You are also hereby requested not to operate the bank account with Anz Grindlays Bank, Greater Kailash I, New Delhi. Please note that we are informing the said Bank of the termination of the Agreement and directing them not to allow you to operate the Account with them."

9. Reading of both the letters clearly show that what has been asserted by the petitioner is correct. It is admitted therein that M/s ITC Hotels Limited had assigned its obligations to the petitioner and this had been accepted by the respondent. They had pointed certain defects and deficiencies and consequently the petitioner indeed has a right to claim and take advantage of the agreement referred to above.

10. Perusal of the pleadings reveal clearly that disputes indeed have arisen and there was an arbitration agreement between the parties. A notice had been served without any effect. In that event under sub Section (4) to Section 11 of the Arbitration and conciliation Act, 1996, this Court would be competent to appoint an arbitrator.

11. For these reasons this Court appoint Hon'ble Mr. Justice P.K. Bahri, former Judge of this court as the arbitrator to go into the disputes mentioned in paragraph 7(g) to 7(t). The arbitrator shall fix his fee.