

**(2009) 04 DEL CK 0132**

**In the Delhi High Court**

**Case No : O.M.P. No. 31 of 2009 & OMP No. 31 of 2009**

Online Hotel Reservations Pvt. Ltd.

APPELLANT

Vs

Classic Citi Investment Pvt. Ltd.

RESPONDENT

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**Date of Decision : 02-04-2009**

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 36, 9  
Specific Relief Act, 1963 — Section 14

**Citation : (2010) 7 RCR(Civil) 2773**

**Hon'ble Judges : S.N. Dhingra, J**

**Bench : Single Bench**

**Advocate : Rajshekhar Rao and Arshdeep Singh, for the Appellant; Kailash Vasudev and Arjun Chakraborty, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Shiv Narayan Dhingra, J.—This application/petition has been made u/s 9 of the Arbitration and Conciliation Act by the petitioner with a prayer that this Court should restrain the respondent from terminating the contracts dated 7.8.2007 & 25.10.2007 whereby the respondent had engaged petitioner for online hotel reservations. The contention of the petitioner is that the contracts entered into between the parties were fixed term contracts for a period of five years. The petitioner however, has recently learned that the respondent in contravention of the contracts has terminated the same without issuing any prior notice to the petitioner, by approaching the service provider and communicating that the respondent's hotels be taken offline. Prayer is made that this Court should restrain the respondent from terminating the contracts and should issue mandatory injunction directing respondent to recall its notice of termination and should restrain respondent from switching from services to another system.

2. The respondent who has put appearance has raised objection in respect of territorial jurisdiction concerning one of the agreements. However, irrespective of the territorial jurisdiction, I consider that this application/petition prima facie is

not maintainable and can be disposed of. Section 9 gives jurisdiction to this Court to pass an order of the interim nature pending adjudication to the following extent:

Interim measures, etc. by court ? A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a court:

(i) For the appointment of a guardian for a minor or a person of unsound mind for the purpose of arbitral proceedings; or

(ii) For an interim measure of protection in respect of any of the following matters, namely:

(a) The preservation, interim custody or sale of any goods, which are the subject matter of the arbitration agreement;

(b) Securing the amount in dispute in the arbitration;

(c) The detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorizing any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) Interim injunction or the appointment of a receiver;

(e) Such other interim measure of protection as may appear to the court to be just and convenient,

And the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

3. While passing the order u/s 9, the Court cannot restore parties to previous position as was there before arising of dispute so that no dispute at all remains between the parties and nothing could be referred to the arbitration. The contention of the petitioner that the contracts were fixed term contracts and could not be terminated is a baseless contention. The contracts relied upon by the petitioner do not provide that it could not be terminated. It only provided that the period of contracts shall be five years. The termination of these contracts on behalf of the petitioner is provided in Clause 3.01 where it is provided that in the event of non-payment by the respondent, the petitioner could take the respondent offline. I consider that similarly, the respondent has also a right to terminate the contract if the respondent is not satisfied with the services provided by the petitioner and can take its hotel offline. In the present case the petitioner booked a hotel room of respondent for Rs. 129/- per day while the charges notified to the petitioner were US \$ 129 per day. Passing of an order that the contracts between the parties shall continue during adjudication of

the dispute under the Arbitration & Conciliation Act in fact would be allowing the entire relief to the petitioner. The petitioner, if has suffered any damages because of the termination of the contract, is liable to claim damages through the arbitration. The petitioner cannot impose itself as a service provider on the respondent. The contracts between the petitioner and the respondent are the contracts of service, where petitioner used to do online hotel booking of the respondent's hotel rooms. No court can force a contract of service on someone, a contract of service is not specifically enforceable. Section 14 of the Specific Relief Act provides that where compensation in money is adequate relief for non-performance, such a contract cannot be specifically enforced. I, therefore, consider that this application/petition is not maintainable and is liable to be dismissed and is hereby dismissed.