

RAJASTHAN HIGH COURT

Hotel Kohinoor

Vs.

Vijay Kumar and Co.

C.M. (A) Appln. No. 49 of 2003

(Mrs. GyanSudhaMisra, J.)

08.04.2004

ORDER

Mrs. GyanSudhaMisra, J.

1. This application has been filed by the applicant M/s. Hotel Kohinoor for appointment of an arbitrator in terms of Clause 18 of the agreement which has been entered into between the applicant-M/s. Hotel Kohinoor and the respondent M/s. Vijay Kumar and Co. It is an admitted position that the applicant M/s. Hotel Kohinoor was given out on lease for its maintenance and management by the respondent M/s. Vijay Kumar and Co. for which purpose the respondent licensee had to pay the license fee of Rs. 3,61,000/- per month payable by 10th of each month. A written agreement for this purpose was executed between the parties incorporating clause 18 which envisaged that in case of any dispute or difference arising out of the deed of license between the parties, the same shall be referred to the arbitration for sorting out the dispute in accordance with the provisions of the Indian Arbitration Act, 1996 and in that case it shall be subject to the jurisdiction at *Jaipur*. It was further specifically agreed that the period of license being specific i.e. for 5 years, monthly license fee and the due date of its payment also being clearly fixed, the licensee will not raise any dispute or difference on this count due to which it shall not be subject to arbitration and the licensor shall have exclusive power to terminate the license on expiry of license period and on payment of license fees subject to notice of 30 days as stipulated in clause 10 of the agreement.

2. The agreement further lays down that all the rights, title and interest and building shall always vest in the licensor, before, during or after the license agreement and no right, title and interest is created by licensor in favor of licensee by this instrument

except the privilege to use and occupy the licensed premises for carrying only the specified hotel and restaurant activities for a future specified period.

3. In spite of the specific clause incorporated in the agreement that the licensee would be under obligation to pay the license fee by 10th of each month, it is alleged by the applicant M/s. Hotel Kohinoor that the respondent has failed to honour the agreement and did not pay the license fee as specifically stipulated in the agreement and since the same is payable by the respondent, which has not been paid to them, the matter has to be referred to the arbitrator. The applicant, therefore, has filed this application for appointment of an arbitrator in terms of clause 18 of the agreement as it has been stated that the licensee neither paid the license fee nor handed over the management of the hotel to the applicant which he was legally bound to do in terms of the agreement. As a consequence of this, several legal documents for instance the papers relating to the tax deduction at source, Insurance charges, forfeiture of securities have not been handed over to the applicant by the respondent on one pretext or the other which has given rise to a *bona fide* dispute between the parties and is a fit case for referring the dispute and deciding the same by appointing an arbitrator in terms of clause 18 read with Section 11 of the Arbitration and Conciliation Act, 1996.

4. The counsel for the respondent Mr. Rajan on the other hand has strongly opposed the application for appointment of an arbitrator and he has submitted that there is no dispute existing between the parties as the license fee even as per the agreement is admittedly payable by the respondent and hence there is no dispute in existence regarding payment of license fee due to which it is not fit to be referred for arbitration even in terms of clause 18 of the agreement which specifically bars appointment of arbitrator on this score. The counsel for the respondent thus, has sought to use a double-edged weapon in favor of his client-respondent as on the one hand it has been submitted that even if the license fee is payable by the respondent to the applicant and has not been paid, the same cannot be construed as a dispute so as to bring it within the ambit and scope of clause for arbitration and in the next breath he has also submitted that the respondent is under no obligation to honor this part of the agreement so that the respondent may be absolved of the liability from paying the amount towards license fee on one pretext or the other and he may also succeed in forestalling the arbitration proceeding by opposing the application for appointment of an arbitrator taking the shelter of the agreement.

5. Having considered the rival contentions of the counsel for the parties, it is quite transparent and on the surface that Mr. Ranjan has advanced an extremely

unreasonable argument in favor of the respondent ignoring the fact that the payment of license fee is an accepted fact even as per the agreement and therefore, he was prevented from even raising the dispute regarding payment of the license fee, but if he has failed to honour this legal commitment for one reason or the other, the agreement cannot be interpreted so as to infer that the dispute of this nature is outside the ambit and scope of the clause of arbitration. The respondent thereafter cannot be allowed to derive undue benefit by adopting such a course which is not only unreasonable, but contrary to the entire purpose of the agreement when read in its entirety. Therefore, the arguments advanced by Mr. Ranjan is clearly against the canons of justice and fair play and hence it is rejected outright.

6. The consequence which follows from the discussion is that the disputes which have been raised by the applicant referred to hereinbefore has to be referred to the arbitrator for its adjudication for which the names of the proposed arbitrator were invited from the counsel for the contesting parties who can adjudicate upon the dispute involved. Learned counsel for the applicant Mr. Mehta as also for the respondent Mr. Ranjan have both agreed upon the name of the Hon'ble Mr. Justice R.S. Verma a retired Judge of this High Court to act as arbitrator between the contesting parties for adjudication of the dispute which is acceptable to this Court and, therefore, all disputes existing between the applicant and the respondent arising out of the license agreement executed between them on 5th October, 2002 as contained in Annexure-1 is referred to the sole arbitrator-Hon'ble Mr. Justice R.S. Verma (since retired) for adjudication who after hearing both the parties and proper appreciation will pass a final award. The parties may request the learned arbitrator to pass the award expeditiously.

7. The application accordingly stands allowed and disposed of.

Application allowed.