

Moot Court Proposition

1. Mahindra resorts have significantly outranked its competitors within the long time 2019, 2020 and 2021 due to their greatness, so they coupled with Indicia which being a prevalent visitor goal. Based on broad inquiry carried out by its administration and potential development in future along with increasing request, the Board of Chiefs choose to extend the chain of inns that were a part of Indicia along with the expansion of the cutting edge extravagance lodging along the coastal lines of Navi Mumbai with quick ocean get to in December 2021. Mahindra Resorts procured the specified location at a premium price with the purpose of opening the lodging to the public as soon as possible.
2. Mahindra elected the arbitration and conciliation act in 2020 the text of which is materially identical to the Indian Arbitration and Conciliation Act 1996 as amended up till 1st April, 2017. Therefore, both Mahindra and Indicia have decided to use the arbitration statute in 2020. Mahindra and Indicia are incorporated in Hyderabad and Ahmedabad respectively they both regularly carry on business in India as well as other parts of India, i.e. Delhi, Chennai & Bangalore.
3. Mahindra Resort is a seven star hotel and Resort with a reputation for providing the best services which meet the requirements of novel and different customers. Indicia is also one of the India's leading Resorts which is renowned for its efficient service to the customers and uses it as its trademark. Indicia have supplied various other good restaurants in other parts of the country as a result Indica has maintained the high quality and quantity which has to be produced to the customers who require its services.
4. On 1st of February 2019, the parties entered into an agreement as per a contract which had clauses suggested by both Mahindra and Indicia (The general clauses are similar to general contract). The Contract includes place of Arbitration in Madras and Force Majeure clauses and the Agreement is governed by the Law of India.
5. As per the Agreement, Mahindra Resorts paid 40% as consideration. Thereafter, Indicia accepted terms of the Agreement, where Mahindra Resorts intended to accept reservations for guest stays from 2019 onwards as a condition.

6. Mahindra resort has entered into the agreement with Indicia where they have gone for the consideration with the conditions for the services provided to the customers with Indicia. Mahindra has gone for the execution of services obligation in this agreement and they have agreed to have the service obligations through consideration done in stages and each stage has to be done after the completion of the condition by Mahindra.
7. The agreement provides the continuation, and it includes the exchange of the conditions for the services provided, the agreement containing the arbitration clause provided for arbitration in London, and the law governing the arbitration agreement is not going to be set into two agreements and it also contains a provision with the right to approach the court for seeking any interim relief.
8. Because of COVID-19 a huge pandemic has occurred and given a major attack to both of the parties and it has been assessed that COVID-19 can be seen for long period of time by March 2020 Even though both the resorts have come up with the peak of their promotion and marketing activities but due to the publicity of the resorts there was a massive inflow reservation in the resorts and it has given a lots of business but in March 2020 it has been seen that the government of India has come up with the lockdown from March till November due to which the resorts was closed.
9. Country has operated the regular manner during the other months with safety protocols of Covid -19 on priority. For the first several months of postcovid-19 the resort has successfully completed the targets within the time frame and the certain aspects have been settled for certain payments. In meanwhile some transaction has been found false on behalf of the failed transactions.
10. By early December 2020, over 80% of the transaction was completed; However, Indicia were not within the stipulated time frames for transferring the amounts. Following the Covid-19 protocols, the management of Indicia Resorts determined the business of 8 crores has been completed by February 2021. Due to cause of action and arising of dispute, Indicia has initiated the arbitration proceeding against Mahindra of one crore on the basis that the part of the consideration has not been paid.
11. During the course of the arbitration, Mahindra has come to know that the Arbitrator proposed by Indicia have continuously been proposed as an arbitrator in several other arbitrations, in which Indicia is been represented by the Firm of Attorneys at the said Arbitrations. As such, Mahindra made

a separate application that there is apparent bias in respect of the Arbitrator appointed by Indicia.

12. Mahindra has filed a counterclaim and on the basis of that, Indicia has disclose all the transactions at the time of due diligence which has been conducted by Indicia but Mahindra claim that all the transaction has gone only for 8 crores but Indicia has claimed that Mahindra has done some fraud and the matter has to be decided by the civil court at this juncture Indicia has filed an application under section 9 of Arbitration and Conciliation Act seeking a direction against Mahindra but this application has been dismissed by the single judge of Ahmedabad High Court on the basis of maintainability that-

- The dispute is not going for arbitration because of fraud.
- The consequence of choosing the seat in London was to include the Indian Arbitration and Conciliation Act as there may not be anything against the public policy for two Indian parties.
- Even any part of the Arbitration and Conciliation Act does not apply to the given situation.
- Party has waived section 9 of the act.

13. Now the matter is in front of division bench for the next hearing in Ahmedabad High Court.

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