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

+ W.P.(C) 5359/2017

M/S OTIK HOTELS AND RESORTS PRIVATE
LIMITED

..... Petitioner

Through: Mr Kirti Uppal, Senior Advocate with
Mr Manjit Singh Ahluwalia,
Advocate.

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LTD

..... Respondent

Through: Mr Nikhil Majithia, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **03.07.2017**

CM No.22660/2017

1. Allowed, subject to all just exceptions.

W.P.(C) 5359/2017 & CM No.22659/2017

2. The petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia*, praying as under:-

"a) A writ of and/or in the nature of mandamus/certiorari where by declaring the clause 4.8 of the tender Document (Annexure-4) as ultra vires, null and void no nest in the eyes of law.

b) A writ of and/or in the nature of mandamus/whereby setting aside the Letter Dated 25.05.2017 and allowing the petitioner to participating in future tenders/bids of onboard catering train services.

- c) A writ of and/or in the nature of mandamus/where by Directing to respondents to refund the Security Deposit and License Fees Including Services tax amounting to Total Rs.17,19,752/-.
- d) Rule NISI in terms of prayers above;
- e) If no cause or sufficient cause is shown, the Rule be made absolute;"

3. The present petition was filed for the first time on 21.06.2017 and on that date, the learned counsel for the petitioner had restricted the prayers made in the petition only to the letter/order dated 25.05.2017 (hereafter 'the impugned order') passed by the respondent. Accordingly, the Division Bench directed the present petition to be listed before a single judge.

4. Mr Uppal, learned senior counsel for the petitioner has restricted the present petition only to the question of petitioner being debarred from participating in other tenders for a period of one year. He has drawn the attention of this Court to Clause 4.8 of the General Conditions of Licence, which reads as under:-

“4.8 Non acceptance of award	In case the successful bidder fails to accept the offer of award of License along with security deposit and licence fee, within the stipulated time as advised by IRCTC, the licence shall be terminated alongwith forfeiture of security deposit and licence fee, whole or part thereof, as the case may be. Further, he will be debarred from participating in the bidding process of future projects of IRCTC for a period of one year.”
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5. The impugned order has been passed in terms of the said clause, which according to the petitioner is wholly illegal and unwarranted. He, however, submits that insofar as the claims for wrongful forfeiture of license fee and deposit is concerned, the petitioner would take other remedies as available. However, as far as banning the petitioner from participating in any tender for a further period of one year is concerned, the petitioner seeks its remedies by way of this petition.

6. Mr Uppal contended that the respondent is a State and it is well settled that a punitive measure cannot not be taken without affording the party(ies) adversely affected an opportunity to be heard. A fair hearing is now an established rule of natural justice. He submits that this ground may not be available in arbitration as that is the remedy that the petitioner now seeks to avail.

7. Mr Majithia, the learned counsel for the respondent has opposed the present petition essentially on several grounds. First, he submits that the petitioner has moved a similar writ petition which was withdrawn by the petitioner on 07.06.2017 (being W.P.(C) No.5227/2017). He submits that having withdrawn the challenge, the petitioner is precluded from re-filing the present petition. Second, he drew the attention of this Court to clause (f) of the form for submission of bid, which itself expressly provided that in the event of non acceptance of the award and on account of non fulfilment of tender conditions within the specified time, the bidder would be debarred from further participation in future tenders of the respondent for a period of one year. He submitted that this was the condition on which all the bidders had submitted their bids and, therefore, the petitioner could not now be heard to contend to the contrary.

8. Mr Majithia also submitted that the petitioner has an adequate remedy by way of arbitration under the Arbitration and Conciliation Act, 1996.

9. He also refers to the order dated 05.10.2016 passed by the Coordinate Bench of this Court in W.P.(C) No.8159/2016 & 9158/2016 captioned as "*M/s Otik Hotels and Resorts Private Limited v. Indian Railways Catering and Tourism Corporation Ltd.*" and submitted that the same were in respect of another tender submitted by the petitioner, where also the petitioner had defaulted in adhering to the tender conditions. He contended that it was apparent from the said order that the petitioner was a habitual defaulter and was not entitled to any discretionary relief. He also submitted that no notice or hearing was required before passing an order debarring the bidder who had failed to perform the tender conditions from participating in future tenders.

10. Clause 9 of the General Conditions of Licence provides that all disputes or differences arising under the conditions of license or in connection therewith would be resolved by arbitration. Thus, there is much merit in Mr Majithia's contention that all the grievances raised by the petitioner can be agitated before the arbitral tribunal constituted in terms of the arbitration agreement between the parties.

11. Indisputably, the arbitration clause is widely worded and this Court is not persuaded to accept Mr Uppal's contention that the petitioner would be precluded from raising the issue that the impugned order is passed in violation of principles of natural justice in arbitration. The principles of natural justice are now well enshrined in the laws of this Country and the validity of any order passed in violation thereof would be susceptible to challenge. Such challenge can also be considered by the arbitral tribunal.

Thus, it would be open for the petitioner to assail the impugned order before the arbitral tribunal on the grounds as are sought to be urged in this petition.

12. The present petition is disposed of with the aforesaid clarification and with liberty to the petitioner to invoke the arbitration clause and seek such remedies as available.

13. It is clarified that nothing stated in this order be construed as an expression on the merits of the disputes raised.

VIBHU BAKHRU, J

JULY 03, 2017
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