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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 244/2018 & IA 8030/2018**
HALDIRAM PRODUCTS PVT. LTD Petitioner
Through: Mr.Manjit Singh Ahluwalia, Adv.

versus

**INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LTD** Respondent
Through: Mr.Nikhil Majithia, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **01.06.2018**

IA 8030/2018

Exemption allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 244/2018

This petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') *inter alia* praying for the following reliefs:-

*“(a) issue an ad interim direction whereby staying the operation of the termination letter No.2017/IRCTC/Catg./DCS/12049-50 dated 5.7.2017 passed by the respondent, debarring the petitioner from future participation in tenders for one year.
(b) Direct the respondents to refund the security deposit of Rs.300000/- and license fee including service tax amounting to total Rs.33,47,779/-.
(c) and allow the petitioner to participate in future bids till passing of the award.”*

It is the case of the petitioner that pursuant to being successful in the tender for award of temporary licence for provision of onboard catering services for Train No. 12049-50 NZM. - AGC, Gatiman

Express Train, the petitioner was awarded by the respondent temporary licence for a licence fee of Rs.33,47,779/- including tax for a period of six months from the commencement of services or takeover of service and on a security deposit of Rs.3 lacs. The petitioner submits that the petitioner started providing catering services with effect from 12th April, 2017.

By its letter dated 3rd May, 2017, the petitioner sought modification in the contract so as to be allowed to operate in the name of the 'Ethnic Railway Hospitality'. The respondent, however, failed to consider the said request and instead issued a show cause notice dated 21st June, 2017 and finally terminated the license vide its letter dated 5th July, 2017. The respondent forfeited the concession fee and the security deposit and debarred the petitioner from participating in future projects of the respondent for a period of one year with effect from 10th July, 2017.

The petitioner challenged the above termination notice by way of a writ petition being WP(C) No.1757/2018, which was dismissed by this Court by way of its order dated 22nd March, 2018 on the ground of the petitioner having an alternate efficacious remedy.

Counsel for the petitioner relies upon the judgments of this Court in *Sanraj Hospitality Pvt. Ltd. vs. Union of India & Ors.* (judgment dated 6th October, 2016 in WP(C) No.9209/2016) and *M/s Otik Hotels and Resorts Pvt. Ltd. vs. Indian Railway Catering and Tourism Corporation Ltd.* (judgment dated 25th August, 2017 in OMP(I)(Comm.) No.287/2017) and submits that the order, in so far as it debars the petitioner from participating in future projects of the

respondent for a period of one year, is disproportionate and should be stayed during the arbitration proceedings that are to be initiated. He submits that even otherwise, the termination notice is illegal and is liable to be set aside.

I have considered the submissions made by the counsel for the petitioner, however, without expressing any opinion on merits, it is noted that the order debarring the petitioner was passed on 5th July, 2017. Though the date of filing of the writ petition is not evident from the pleadings, it seems to have been filed only in 2018 and as noted above, was dismissed by this Court on 22nd March, 2018. Counsel for the respondent submits that for the first time, this petition was listed for hearing on 23rd February, 2018, that is, almost eight months after passing of the order debarring the petitioner from participating in future projects.

The present petition has been filed thereafter, only on 28th May, 2018. There is no explanation for the initial delay of eight months in filing of the writ petition and further delay of two months in filing of the present petition. Even the Arbitration Agreement has not been invoked till date. In my view, this delay itself is fatal for the petitioner to be granted any relief under Section 9 of the Act.

The petition is accordingly dismissed with no order as to costs.

This order will not prejudice the petitioner in any proceedings before the Arbitral Tribunal whenever and if at all initiated.

NAVIN CHAWLA, J

JUNE 01, 2018
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