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

\+ W.P.(C) 1757/2018, CM Nos. 7262-7264/2018

M/S HALDIRAM PRODUCTS PVT. LTD. ..... Petitioner

Through: Mr. Manjit Singh Ahluwalia, Adv. with Mr. S.S. Mehandru, Adv.

versus

INDIAN RAILWAY CATERING AND TOURISM, CORPORATION LTD. ..... Respondent

Through: Mr. Nikhil Majithia, Adv. for IRCTC

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **22.03.2018**

CM No. 7264/2018

Exemption allowed subject to all just exceptions.

Application stands disposed of.

CM No. 7263/2018

This is an application seeking condonation of 30 days delay in re-filing the present petition. For the reasons stated in the application, the delay of 30 days in re-filing the petition is condoned. Application stands disposed of.

W.P.(C) 1757/2018

1. The present petition has been filed by the petitioner with the following prayers:-

In view of the above circumstances, Your Lordships may graciously be pleased to:-

a) A writ of and/or in the nature of mandamus/whereby setting aside the termination letter No. 2017/IRCTC/Catg./DCS/12049-50 dated 5.7.2017 and allowing the petitioner to participating in future tenders/bids of onboard catering train services, whereby declaring the termination letter as null and void.

A writ of and/or in the nature of mandamus/whereby Directing the respondents to refund the Security Deposit Rs.3,000/- and License Fees including Service tax amounting to Total Rs.33,47,779/-
Rule NISI in terms of prayers above;
If no cause or sufficient cause is shown, the Rule be made absolute;

b) Such further and/or other order or orders be passed and direction be given as to this Hon'ble Court may deem fit and proper."

2. It is the case of the petitioner, on July 06, 2017 the petitioner company participated in award of license for provision of onboard catering services for Train No. 12049-50 NZM-AGC, Gatiman Express. Pursuant to its bid, on March 17, 2017, the respondent awarded the aforesaid temporary license for provision of onboard catering services on the aforesaid train for a license fee of Rs.33,47,779/- including tax for a period of six months to the petitioner. The petitioner accepted the same. It is the case of the petitioner that it complied with all the terms and conditions.

3. It is the case of the petitioner that it had a bitter experience as some unscrupulous elements with malafide intention to tarnish the image of

Haldiram brand, showed menu of Haldiram, on one of the TV channels that petitioner is selling non vegetarian products. The petitioner wrote a letter dated May 03, 2017 to the respondent whereby apprising the true facts and stated that the petitioner has made a name in vegetarian food market in Industry, branding a non-vegetarian products of a menu as Haldiram Branch Chicken on a TV Channel has deeply hurt the sentiments of the petitioner, which has caused distress to Haldirams brand name. Accordingly, vide letter dated May 25, 2017 to save the image of its brand name proposed to the respondent for approval of creation of "Special Purpose Vehicle", M/s Ethnic Railway Hospitality", the wholly owned subsidiary of the petitioner, for execution of the aforesaid contract. Despite several requests, the respondent failed to consider the same, which compelled the petitioner to write a letter dated June 12, 2017 to the respondent whereby showing its inability to continue with the catering services. A show cause notice dated June 21, 2017 was issued to the petitioner wherein a reference was made to Clauses 7.1, 7.2 and 8.1, which includes termination along with forfeiture of concession fee and security deposit and also debarment from participating in the future projects of IRCTC for a period of one year. A reply was given by the petitioner on June 27, 2017, which was followed by the impugned letter dated July 05, 2017.

4. Mr. Majithia, learned counsel appearing for the respondent has raised a preliminary objection on the maintainability of the petition in view of arbitration clause in the Contract being Clause 9.1. According to him, the prayers as made in the petition, which includes a challenge to the blacklisting need to be decided through the process of Arbitration, as agreed between the parties. He relied on the following judgment:

> ***K.V. Fire Chemicals (I) Pvt. Ltd. Vs. Indian Oil Corporation Limited and Ors Arbitration Case No. 84/2014 (O&M) decided on September 24, 2015***

5. Mr. Ahluwalia has stated that the issue of blacklisting cannot be gone into by the learned Arbitrator. In other words, he concedes that the other prayers made by the petitioner in the writ petition for refund of security deposit and license fee including service tax can be decided by the learned Arbitrator. He would rely upon the following judgments in support of his contention:-

(i) Gorkha Security Services v. Govt. of NCT of Delhi & Ors Civil Appeal Nos. 7167-7168/2014 decided on August 04, 2014;

(ii) M/s Kulja Industries Limited v. Chief Gen. Manager W.t. Proj. BSNL & Ors. Civil Appeal No.8944/2013 decided on October 04, 2013;

(iii) Central Distillery and Breweries Ltd. V. Commissioner of Excise, Delhi Administration & Ors 20 (1981) DLT 469 (DB);

(iv) Sanraj Hospitality Pvt. Ltd v. Union of India and Ors. W.P.(C) No. 9209/2016 and connected writ petition decided on October 06, 2016;

(v) Himalaya Communications Ltd. V. Bharat Sanchar Nigam Ltd. 242 (2017) DLT 612;

(vi) M/s Otik Hotels and Resorts Private Limited v. Indian Railway Catering And Tourism Corporation Ltd. W.P.(C) 9159/2016 and connected writ petition decided on October 05, 2016;

(vii) National Building Construction Corporation Ltd. V. New Delhi Municipal Council & Anr. 138 (2007) DLT 414.

6. That apart, he has made submission on the aspect of black listing, inasmuch as against a six months contract, the respondent has imposed blacklisting for a period of one year, which is disproportionate.

7. The judgments relied upon by Mr. Ahluwalia do not deal with the issue, which arises for consideration in this petition whether the blacklisting can be a subject matter of an arbitration under Clause 9.1. Hence, they have no applicability on the limited issue being decided by this Court. Rather, the judgment relied upon by Mr. Majithia squarely deals with the said issue. In para 42, the Punjab & Haryana High Court has held as under:-

> *"42. The question now is whether the disputes raised in the present case fall within the ambit of the arbitration clause contained in the agreement. The dispute other than those relating to blacklisting itself can certainly be referred to arbitration for reasons I have already stated. The arbitration clause is wide enough to make a reference of such disputes to*

arbitration. The arbitration clause is in respect of all disputes arising out of the purchase order. The dispute in the present case relating to blacklisting is on account of the conduct of the petitioner arising only out of the purchase order. It is not the respondents' case that the order of blacklisting in this case was on account of the petitioner's conduct in respect of any other contract. Nor is it the petitioner's case that the order of blacklisting was on account of the petitioner's conduct in any other respect whatsoever. In view of what I have already held the dispute relating to blacklisting, therefore, is arbitrable. The arbitration clause is wide enough to cover the disputes including in relation to the issue of blacklisting. The words "arising out of" are of wide import. In Renusagar Power Co. Ltd v. General Electric Company and another, Manu/SC/0001/1984 : 1984 (4) Supreme Court Cases 679, the Supreme Court held in paragraph-25 that expressions, such as, "arising out of" are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement. The disputes in the present case, therefore, are covered by the arbitration clause."

8. In the case in hand, the arbitration clause reads as under:-

"9.1 In the event of any dispute or difference arising under these conditions of License or in connection with this License (except as to any matters, the decision of which is specifically provided for by these or the special conditions) the same will be resolved by Arbitration, as per the provisions of "The Arbitration and Conciliation Act- 1996". The venue of the Arbitration shall be Delhi. All questions, disputes and or differences arising under or in connection with this agreement or in touching or relating to or concerning the construction, or affect of presents (excepts as to matters the decision whereof is other-wise herein before, expressly provided for) shall be referred to the sole arbitration of the officer/officers or persons nominated by the Chairman & Managing Director/IRCTC whose decision in this regard

shall be final and binding on the Licensee."

9. The words *"dispute or difference arising under these conditions of License or in connection with this License"* would encompass an issue of blacklisting as well. This I say so, the blacklisting purported to have been done by the respondent under Clause 7.1. That apart, at least from the submissions advanced by the learned counsel for the parties, it is clear the resolution of dispute require interpretation of the provisions of the Contract and in terms of the judgment of the Supreme Court in the case reported as ***2010 (11) SCC 186 Zonal Manager, Central Bank of India v. Devi Ispat Ltd. And Ors.,*** while relying on ***(2000) 6 SCC 293 Kerala State Electricity Board and Anr. V. Kurien E. Kalathil and Ors*** the Supreme Court observed when interpretation of Contract arises, the remedy lies with the Arbitral Tribunal. I reproduce sub-para 11 of the judgment as under:-

> *"11. XXXX XXXX XXXX*
> *The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract."*

10. Further, in para 11, the Supreme Court held as under:-

> *"11. XXXX XXXX XXXX*
> *It is settled law that the disputes relating to interpretation of*

terms and conditions of a contract could not be examined/challenged or agitated in a petition filed under Article 226 of the Constitution."

11. In view of my discussion above, the present petition is not maintainable. Liberty is with the petitioner, if so advised, to invoke the arbitration clause for the reliefs as prayed for in the present petition.

CM No. 7262/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

MARCH 22, 2018/*ak*