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

+ **O.M.P.(I) (COMM.) 77/2024**

M/S SINGH CATERERS AND VENDORS Petitioner

Through: Mr. Jitender Mehta, Mr. Lalit Kumar, Mr. Chetan Sharma, Mr. Rahul Gupta & Mr. Pardeep Desodiya, Advocates. [M:- 9625461696]

versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LIMITED & ORS. Respondents

Through: Ms. Manisha Singh, Ms. Ashu Pathak, Mr. George Pathan P. & Ms. Jyoti Singh, Advocates for R-1/IRCTC.
Mr. J.K. Tripathi, SPC with Mr. Jitender, GP for R-2 & 3.
Mr. Vineet Dhanda, CGSC with Ms. Gurleen Kaur & Mr. Archit Aggarwal, Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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07.03.2024

I.A. 5424/2024 (Exemption) & I.A. 5425/2024 (Exemption)

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

O.M.P.(I) (COMM.) 77/2024

1. Issue notice. Ms. Manisha Singh, learned counsel accepts notice on behalf of the respondent No. 1. Learned counsel for respondent Nos. 2



and 3 accept notice.

2. This petition under Section 9 of the Arbitration and Conciliation Act, 1996 [“the Act”], has been filed in anticipation of arbitration proceedings under a Tripartite Agreement dated 16.08.2017 between the petitioner, respondent No. 1 - Indian Railway Catering and Tourism Corporation Limited [“IRCTC”] and respondent No. 3 - Chief Commercial Manager, East Central Railway.

3. The petitioner was originally granted a Master License Agreement dated 26.02.2014 by respondent No. 3 to provide catering services on the Shramjeevi Express Train. By way of the Tripartite Agreement, IRCTC was also inducted as a party to the arrangement. The Tripartite Agreement contains an arbitration clause [Clause 8.9]. Disputes have arisen between the parties with regard to the license fee and security deposit, pursuant to which the petitioner has invoked arbitration by a letter dated 15.02.2024. It now seeks interim measures of protection, restraining IRCTC from enforcing demand notices dated 11.08.2023 and 06.02.2024, and other reliefs.

4. Mr. Jitender Mehta, learned counsel for the petitioner, submits that in a similar case of a different caterer, this Court, by an order dated 04.10.2023 in *Brandavan Food Products vs. Indian Railway Catering and Tourism Corporation Limited (IRCTC) & Ors.* [O.M.P.(I)(COMM.) 308/2023] referred the parties to arbitration and also granted certain interim reliefs. A copy of the said order has been placed on record.

5. The operative directions contained in the order dated 04.10.2023 are as follows:-

“5. Considering that both the parties have consented to the reference



to the arbitral tribunal, the present petition is converted into a petition under Section 11 of the A&C Act and disposed of with the following directions:

- i. The disputes between the parties under the said agreement are referred to the arbitral tribunal.
 - ii. Sh. R.K. Gauba, (Mobile No. 9650411919) Retd. High Court Judge is appointed as the sole Arbitrator to adjudicate the disputes between the parties.
 - iii. The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the A&C Act or as the parties may agree.
 - iv. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - v. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - vi. The parties shall approach the learned arbitrator within two weeks from today.
6. Since the matter has been referred to arbitration, the relief sought by the present petitioner in the present petition shall be considered by the learned Arbitrator in accordance with the law. However, till the time, the application moved under Section 17 of the Act is moved and considered by the learned arbitrator, and the following ad interim arrangements are made:
1. Respondent No. 1 or any of its assigns, agents or delegates shall not enforce the demand noted dated 21.08.2023 against the petitioner,
 2. Respondent No. 1 or any of its assigns, agents or delegates from enforcing its letter dated 08.04.2022 bearing No. 2019/IR CTC/Catg./SBD/Extension of license/PT-IV against the Petitioner.
 3. Respondent No. 1 or any of its assigns, agents or delegates from enforcing its letter dated 08.04.2023 bearing No. 2019/IR CTC/Catg./SBD/Extension of license/PT-IV against the Petitioner;
 4. Respondent No. 1 or any of its assigns, agents or delegates from deducting amounts from the pending bills, license fee, security deposits, etc. of the Petitioner; and /or from withholding the payment of the pending bills, license fee, security deposits, etc. of the Petitioner.



7. *However, it is made clear that the above arrangement is just an ad-interim arrangement and the learned Arbitrator shall decide the application under Section 17 of the Act in accordance with the law.”*

6. Learned counsel for the respondents dispute the petitioner's entitlement to interim relief, but do not suggest that the present case is materially different from the case of *Brandavan Food Products* (supra). Learned counsel have also taken instructions and state that the respondents have no objection to a reference to arbitration in these proceedings itself.

7. Having regard to the fact that the present case is admittedly no different from the aforesaid case, I am of the view that it would be appropriate to follow the same order.

8. With the consent of learned counsel for the parties, the disputes between the parties under the Tripartite Agreement are referred to arbitration of Hon'ble Mr. Justice R.K. Gauba, former Judge of this Court [Tel:- 9650411919]. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi-110503 [“DIAC”], and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act, prior to entering upon the reference.

9. Following the aforesaid order, the present petition will be considered by the learned Arbitrator as an application under Section 17 of the Act. The respondents may file their replies thereto within two weeks from today.

10. Until the learned Arbitrator has had an opportunity to consider the



application, respondent No. 1 is directed not take any coercive steps pursuant to the demand notices dated 11.08.2023 and 06.02.2024 or to enforce its letters dated 08.04.2022 and 08.02.2023 against the petitioner. Respondent No. 1 is also directed not to deduct amounts from the petitioner's pending bills, license fees, security deposit etc., subject to further orders passed by the learned Arbitrator.

11. It is made clear that the present arrangement is merely an *ad-interim* arrangement, following the order dated 04.10.2023, and this Court has not expressed any view, even *prima facie*, on the rights and contentions of the parties. It will be open to the parties to request the learned Arbitrator to continue, vacate, vary or modify the present order in the application under Section 17 of the Act.

12. The petition stands disposed of with these directions.

PRATEEK JALAN, J

MARCH 7, 2024

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