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

+ **ARB.P. 901/2023**

**INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LTD** Petitioner

Through: Mr. Rajat Malhotra, Adv. (VC) with
Ms. Madhu Kumari, Ms. Dipita,
Advs.

versus

M/S JANA JAL YATRIGANA LLP Respondent

Through: Mr. Usman G. Khan, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

29.01.2024

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1. The present petition has been filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator to adjudicate the disputes inter se the parties.
2. The petitioner issued a Letter of award/tender document dated 02.01.2017 to the respondent. The tender document in clause- 10.1 contains the arbitration clause with the seat at New Delhi which reads as follows;

10.1 In the event of any dispute or difference arising under these conditions of Licence or in connection with this Licence (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 Managing Director/IRCTC whose decision in this regard shall be binding on the Licensee.

3. Learned counsel for the respondent submits that an independent arbitrator may be appointed subject to the contentions to be raised by the respondent during the course of the arbitration proceedings.
4. Learned counsel for the petitioner has also submitted that though as per the tender document, the arbitrator is to be appointed by the Managing Director, IRCTC. However, in view of the ***Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited*** 2019 SCC OnLine SC 1517, the petitioner has moved to Court for the appointment of an independent arbitrator.
5. Considering that both the parties have consented to the reference to the arbitral tribunal, the present petition is disposed of with the following directions:
 - i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
 - ii) As agreed by both the counsels for the parties, Justice Ms. Deepa Sharma, Former Judge, Delhi High Court is appointed as an arbitrator in the present matter to adjudicate the disputes between the parties.
 - iii) The remuneration of the learned Arbitrator shall be fixed with the consent of the parties.
 - iv) The learned Arbitrator is requested to furnish a declaration in



terms of Section 12 of the Act before 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 claims, 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. The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

JANUARY 29, 2024

Pallavi