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

+ **W.P.(C) 11363/2024, CM APPL. 47127/2024**

**M/S OTIK HOTELS AND RESORTS PVT
LTD**

.....Petitioner

Through: Mr. C. Mohan Rao, Sr. Adv with Mr.
S. B. Singh, Mr. Lokesh Sharma,
Advs.

versus

**INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED**

.....Respondent

Through: Mr. Jitendra Kumar Singh with Ms.
Anjali Kumari, Ms. Harshita Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **16.08.2024**

CM APPL. 47126/2024

Allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 11363/2024, CM APPL. 47127/2024

1. The petitioner in the instant writ petition has prayed for quashing the impugned notice dated 05.08.2024, issued by the respondent terminating the contract to operate and maintain IRCTC Cafeteria in MoSPI Khursheed Lal Bhawan, Janpath, New Delhi.

2. Learned senior counsel for the petitioner, at the outset, submits that in the instant case, despite there being an Arbitration clause in the contract, the



petitioner should not be relegated to the said remedy for following three reasons:-

- i) There is no show cause notice given to the petitioner before terminating the contract in question.
- ii) No reasons are assigned to the impugned termination as to how the petitioner has violated the terms of the contract.
- iii) There are events of defaults which are stipulated in Clause IX of the contract and in the absence of any of the events which are stipulated within Clause IX, the respondents are not entitled to cancel the contract.

3. He has also placed reliance on the decision of the Supreme Court in the case of *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*¹ and while highlighting paragraph no. 7 of the said decision, he submits that there is no exclusion to the remedy under Article 226 of the Constitution of India, more specifically, when the writ petition seeks for enforcement of any of the fundamental rights or where there is a failure of adherence to principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the *vires* of an Act is challenged.

4. I have considered the submissions made by learned senior counsel appearing for the petitioner and have also given a thoughtful consideration to the application of those principles in the factual matrix of the instant case.

5. A bare perusal of the impugned order dated 05.08.2024 would indicate that the contract of the petitioner had been terminated to operate and maintain IRCTC Cafeteria in MoSPI, Khusheed Lal Bhawan, New Delhi. The impugned letter would further indicate that there have been various



letters and mails received from IRCTC regarding improper services in MoSPI Cafeteria. It further stipulates that the petitioner was repeatedly advised through various letters and e-mails to improve the services at MoSPI, Khusheed Lal Bhawan, New Delhi, which according to the impugned order, the petitioner failed to improve and finally, MoSPI has requested to put a new operator at the premises. According to the communication dated 05.08.2024, as per Clause 41 of the contract, in case of unsatisfactory performance, the IRCTC has the right to terminate the contract at the very instant point of time itself.

6. The Court has also perused the tender document and in terms of which a service lease agreement appears to have been executed between the parties. There is no dispute with respect to the principles laid down by the Supreme Court in the case of ***Harbanslal Sahnia*** (*supra*), however, the facts of the instant case would clearly establish that violation of the terms and conditions of the contract is alleged and the contract does stipulate an Arbitration clause. The veracity of the reasons assigned in the impugned order will have to be adjudicated thoroughly after affording due opportunity of hearing to both the parties. The writ proceedings cannot be the substitute of the arbitration mechanism in all cases.

7. Moreover, if the facts in the case of ***Harbanslal Sahnia*** (*supra*) are appreciated in the right perspective, the same would indicate that the reasons for termination of the contract in that case were solely based on the inspection report, which stood set-aside by the competent authority. The Court, therefore, in the aforesaid decision had taken a view that the decision impugned therein was wholly based on irrelevant ground and accordingly,

¹(2003) 2 SCC 107.



the impugned order therein was set aside. However, the facts and circumstances involved in the instant case are different and therefore, the petitioner may not be able to get any benefit from the decision rendered in the case of *Harbanslal Sahnia* (*supra*). Moreover, none of the exigencies as enshrined in the case of *Harbanslal Sahnia* (*supra*) are met in the instant case.

8. This Court is also not oblivious to the settled position of law that the presence of an alternate efficacious remedy by itself does not oust the jurisdiction of a writ court. However, such a position is also not absolute rather the same is subject to certain exceptions as enunciated by the Supreme Court in the decision of *Radha Krishan Industries v. State of H.P.*², wherein, the Court observed as under:-

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

² (2021) 6 SCC 771.



27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad [Chand Ratan v. Durga Prasad, (2003) 5 SCC 399] , Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India [Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions.”

9. It is discernible from the factual matrix of the instant *lis* that the present is not the case where any of the exigencies mentioned in the aforementioned paragraphs are met. More importantly, this is also not the case, wherein, any fundamental right of the petitioner has been violated.

10. Accordingly, reserving the rights in favour of the petitioner to take the necessary steps in view of the Arbitration clause, the instant petition alongwith pending applications, stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 16, 2024/KG