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

Date of decision: 12.12.2025

+ **O.M.P.(I) (COMM.) 162/2025**

M/S R. K. ASSOCIATES AND HOTELIERS PVT. LTD

.....Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Rajat Aneja, Mr. Jasmeet Singh, Ms. Ritwika Nanda, Mr. Anirudh Bakhru, Mr. Ayush, Mr. Saif Ali, Mr. Pushpendra S. Bhadoria, Mr. Vijay Sharma, Mr. Pranav Menon, Mr. Saurav, Mr. Aditya Sharma, Advs.

versus

**INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LTD. (IRCTC)**

.....Respondent

Through: Mr. Rajat Malhotra, Ms. Madhu K Singh, Mr. Tathagat Tiwari, Advs.

**CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH**

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking stay of effect and operation of the Termination Order dated 02.05.2025 and further restraint against the



respondent from carrying out tender process under NIT bearing “Limited E-Tender No. 2025/IRCTC/WCB/06/M1/MAY/02.

2. The brief facts of the case are that the tender under NIT bearing No. 2024/IRCTC/P&T/CLUSTER/FEB/ECOR/CLT/A-1 was floated by IRCTC, the respondent, consisting of 2 parts.

- Part A - with the construction and operation of Base Kitchens at locations specified by the Respondent

- Part B – dealing with the provision of onboard catering services in cluster trains bearing cluster no. ECoR/CLT/A-1 run by the Respondent, for a total period of five years, further extendable up to 2 years.

3. The cluster included train No.12801-02, PURI-NDLS Purushottam Express. Being the successful bidder, the petitioner was awarded the license for commissioning and operating the Base Kitchens along with provision of on-board catering services in all trains of the said Cluster for a period of five years, further extendable by two years *vide* Letter of Award dated 01.05.2024.
4. The Master License Agreement contained an arbitration clause being clause No. 9, which reads as under:

“9. Arbitration

9.1

a. In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract or the respective right and liability of the parties on any matter in question, with reference to the contract, the Parties agree to use their best efforts to attempt to resolve all disputes in



prompt, equitable and good faith. In the event the Parties are unable to do so, such party may submit demand in writing for reference of dispute to arbitration as prescribed herein.

b. The parties hereto further agree to waive off the applicability of sub-section 12 (5) of Arbitration and Conciliation (Amendment) Act 2015 and will submit demand in writing that the dispute/differences be referred to arbitration along with format annexed hereto as Annexure-- L. The demand for arbitration shall specified the matters which are in question, or subject of dispute or differences as also the amount of claim item wise.

c. Only such dispute or differences, in respect of which the demand has been made, together with counter claims of setoff given by IRCTC shall be referred to arbitration and other matters shall not included in the reference.

In the event of demand made as mention herein above, such dispute or difference arising under any of these conditions or in connection with this contract (except as to any matters the decision of which is specially provided by these or the special conditions) shall be referred to Sole Arbitrator from IRCTC's empanelled Arbitrators. The award of arbitrator shall be final and binding on the parties to this contract. The venue of the Arbitration shall be at New Delhi. The fees and expenses of the Arbitration tribunal and all other expenses of the Arbitration shall be borne jointly by the Parties in equal proportion subject to determination by the Arbitration tribunal."



5. From 30.11.2024 to 30.04.2025, the petitioner raised numerous grievances and complaints regarding the presence of unauthorized food vendors on the train, due to which the petitioner was unable to enjoy the full benefits of the said Agreement.
6. As per the petitioner the presence of unauthorized food vendors further compromised the quality of food, the efficiency as well as the cleanliness of the food provided by the petitioner.
7. Subsequently, the respondent on 03.04.2025 and 08.04.2025 issued show cause notices for violation of the terms of the said Agreement.
8. The petitioner responded on 14.04.2025 and 18.04.2025, denying the contents of the said show cause notices.
9. On 30.04.2025, a personal hearing was granted and post the personal hearing, on 02.05.2025, the respondent terminated the license for the Train No.12801-02. The said letter of termination reads as under:



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इंडियन रेलवे केटरिंग एवं टूरिज्म कॉर्पोरेशन लिमिटेड
(भारत सरकार का सद्यः-मिनी रत्न)
INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD.
(A Govt. of India Enterprise-Mini Ratna)

"CIN:U4990019800018170", E-mail: info@irctc.com, Website: www.irctc.com

IRCTC/CO/CTRG(MCS)/437/2024 (42160)

Dated: 02.05.2025

Ms R.K. Associates & Hoteliers Pvt Ltd.,
D-187, 1st Floor, Wing-B,
Oldha Industrial Area, Phase-I,
New Delhi- 110020,
shagruwal_rkcr@rediffmail.com

Subj: Termination of Contract awarded for train no.12801-02 Purushottam Exp. under Letter of Award dated 01.05.2024 for Cluster no. ECoR/CLT/A-1.

Ref: L/O no. 2024/IRCTC/P&T/CLUSTER/FEB/ECoR/CLT/A-1 dated 01.05.2024.

Vide above referred letter of award dated 01.05.2024, the addressee has been awarded the contract for Commissioning and Operation of Base Kitchens at locations pre-notified in the tender document along with provision of On-board Catering Services in all trains of cluster no. ECoR/CLT/A-1 for a period of 05 years, further extendable up to 02 years.

Show Cause Notice dated 08.04.2025 was issued to you for poor performance in train no.12801-02 for the period from Nov'24- Jan'25 & Feb'25. Further, the Complaints received and penalty imposed for train no. 12801-02 for period from November to February 2025 as briefed below:

	Nov 2024 -Feb-2025
No. of Complaints	321
Total Fine Imposed on deficiency w.r.t. nature of complain	Rs.2,49,000 (Fine imposed for 15 cases and warned for 108 cases)

Further during the personal hearing following were pointed out:

- 1) The performance of the licensee for the contract for 12801-02 (Purushottam Express) has not shown any sign of improvement.
- 2) The performance regarding onboard catering service has been poor, despite meal preparation being with licensee.
- 3) Multiple opportunities had been given for improvement but with no progress and that as per provisions of Long term contract the performance entails termination of contract.
- 4) Your representative pointed out that there is unauthorized vending in the train and complaints are due to the same. However, it was explained that issue with regard to unauthorised vending in the trains was taken up with concerned Railway Authorities and they have submitted a report where in the authorities have found unauthorised personnel of licensee only.
- 5) You have been asked to give a written action plan for improving the performance.
- 6) You have not yet implemented QR code ID cards as per IRCTC directions and have defaulted on this account as well.
- 7) Penalty as per gravity of complaints has been imposed and realised, under intimation to you.

As per tender clause 6.10 of "Master License Agreement" under heading "Unsatisfactory services etc." of tender document states that:-

Borla

ऑफिस: कार्यालय 4 वं तल, एमए-डी, वर्ल्ड ट्रेड सेंटर, नई दिल्ली 110029, दूरभाष: 011-011-36181550, 36181551

Corporate Office : 4th Floor, Tower-D, World Trade Centre, Naraji Nagar, New Delhi-110029. Tel: 011-36181550, 36181551



इंडियन रेलवे कैंटरिंग एवं टूरिज्म कॉर्पोरेशन लिमिटेड
(भारत सरकार का अधिम-मिनी रत्न)

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD.

(A Govt. of India Enterprise-Mini Ratna)

"CIN-L74899DL1899GO1931707", E-mail : Info@irctc.com, Website: www.irctc.com

In the event of unsatisfactory service, poor quality of articles, persistent complaints from passengers, and services being below standard or any failure or default at any time on the part of the Licensee to carry out the terms and provisions of this document to the satisfaction of the IRCTC (who will be sole judge and whose decision shall be final) it shall be optional to the IRCTC to make any substitute arrangement it may deem necessary at the cost and risk of the Licensee or to forthwith terminate the license without any previous notice to the Licensee and in case of such termination the Security Deposit be forfeited by the IRCTC and the Licensee shall have no claim whatsoever against IRCTC or any of the officials in consequence of such termination of the license. No refund of proportionate License Fee shall be admissible in case of Termination under this clause. The Licensee agrees to make good all cost and expenses, if any incurred by the IRCTC for making the substitute arrangements referred to above. The Licensee may also be debarred from participating in the future projects of IRCTC after issuance of notice to the licensee."

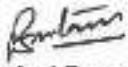
Clause 7.1 under heading "Breach of any terms and conditions of the License" of tender document states that:

"In the event of any breach of the said terms and conditions of the License, the IRCTC shall be entitled to forfeit the whole or the part of the Security Deposit and License fee besides terminating or revoking the License. The Licensee may also be debarred from participating in the future projects of IRCTC upto one year."

The record reveals that you have not complied with the directions, on time bound manner, which is a material breach within the scope of clause 6.10 of "Master License Agreement" under heading "Unsatisfactory services etc." and Clause 7.1 under heading "Breach of any terms and conditions of the License"

In view of the consistent poor performance, Show Cause Notices, reply received and discussions during personal hearing and also no action plan for improvement, Competent Authority has decided to terminate the contract awarded for train no. 12801-02 (Purshottam Exp.) under Cluster ECOR/A-1 along with forfeiture of Security Deposit and Advance License Fee, as per clause 7.1 of Cluster contract.

This issues with the approval of Competent Authority.


(Rashmi Gautam)
GGM/MCS

Copy to: GGM/SCZ/IRCTC

ऑनपरेटिंग कार्यालय: 6 वां तल, टावर-डी, वर्ल्ड ट्रेड सेंटर, नौदेवली नगर, नई दिल्ली -110029, दूरभाष: 011-011-26181550, 26181551

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10. When the matter came up for hearing on 05.05.2025, this Court was please to grant status-quo. The said status-quo continues till date.
11. Mr. Sethi, learned senior counsel for the petitioner, states that the Termination Letter is based on clause 6.10 and 7.1 of the License Agreement. The said clauses read as under:

“6.10 Unsatisfactory services etc.

In the event of unsatisfactory service, poor quality of articles, persistent complaints from passengers, and services below the standard or any failure or default at any time on the part of the Licensee to carry out the terms and provisions of this document to the satisfaction of the IRCTC (who will be sole judge and whose decision shall be final) it shall be optional to the IRCTC to make any substitute arrangement it may deem necessary at the cost and risk of the Licensee or to forthwith terminate the license without any previous notice to the Licensee and in case of such termination the Security Deposit be forfeited by the IRCTC and the Licensee shall have no claim whatsoever against IRCTC or any of the officials in consequence of such termination of the license. No refund of proportionate License Fee shall be admissible in case of Termination under this clause. The Licensee agrees to make good all cost and expenses, if any incurred by the IRCTC for making the substitute arrangements referred to above. The License may also be debarred from participating in the future projects of IRCTC after issuance of notice to the license. No refund of proportionate License Fee shall be admissible in



case of Termination under this clause. The Licensee agrees to make good all cost and expenses, if any incurred by the IRCTC for making the substitute arrangements referred to above.

7.1 Breach of any terms and conditions of the License

In the event of any breach of the said terms and conditions of the License, the IRCTC shall be entitled to forfeit the whole or the part of the Security Deposit and License fee besides terminating or revoking the License. The Licensee may also be debarred from participating in the future projects of IRCTC upto one year.”

12. He states that as per Clause No. 8 of the said Agreement and more particularly Clause No. 8.2, if the respondent is of the view that the petitioner is violating Clause Nos. 7.1 or 6.10, the respondent was required to give a 15 day cure notice before taking action of termination. Since the same has not been done, the entire process is vitiated and deserves to be set aside. Clause No. 8.2 reads as under:

“8.2 Notice for Termination

In case of any event of default mentioned in Clause 7 having occurred, it shall be lawful for the IRCTC any time thereafter to terminate the License agreement and forfeit the Security Deposit and License fee, SUBJECT HOWEVER to the IRCTC having given to the Licensee fifteen (15) days prior notice in writing to remedy or make good such breach and in spite of such notice the Licensee having failed to remedy the breach. Upon



termination of this License agreement as aforesaid, the Licensee shall deliver vacant and peaceful possession of the pantry car to the IRCTC/Railways.”

13. Additionally, he also draws my attention to the amended Clause No. 6.10 which reads as under:

“In the event of unsatisfactory service, poor quality of articles, from persistent complaints from passengers, and services below the standard or any failure or default at any time on the part of the Licensee to carry out the terms and provisions of this document to the satisfaction of the IRCTC (who will be sole judge and whose decision shall be final) it shall be optional to the IRCTC to make any substitute arrangement may deem necessary or to forthwith terminate the license without any previous notice to the Licensee and in case of such termination the Security Deposit be forfeited by the IRCTC and the Licensee shall have no claim whatsoever against IRCTC or any of the officials in consequence of such termination of the license.

The Licensee agree to make all good all cost and expenses, if any incurred by the IRCTC for making the substitute arrangements referred to above. The License may also be debarred from participating in the future projects of IRCTC after issuance of notice to the licensee.”

14. He states despite the clause 6.10 having being amended, the



respondent continued to take action under the pre-amended clause 6.10.

15. Lastly, he submits that the petitioner has made substantial investment on making base kitchen and in case the license is terminated, the huge investment made by the petitioner keeping in view a 7-year license period, would go waste.
16. He relies on the judgment of High Court of Delhi in the matter of ***Ascot Hotels and Resorts Pvt. Ltd. & Anr. v. Cannought Plaza Restaurants Pvt. Ltd., 2018 SCC OnLine Del 7940*** and more particularly, paragraph Nos. 11,16,17, 21, 22 23, 24 and 25, which read as under:

“11. The Arbitrator in the Impugned Order, after relying upon various Clauses of the agreement has held that the appellant has been unable to show the three consecutive defaults in the payment of license fee by the respondent as required in Clause 22.4 of the License Agreement. Even the notice of termination dated 27.01.2017 does not refer to any such default. The Arbitrator therefore, holds that in the absence of such ground being made, the respondent is able to make out a prima facie case and cannot be compensated in terms of money in case interim protection is not granted in its favour. The Arbitrator further holds that the balance of convenience is also in favour of the respondent and against the appellant. As far as Section 14(1)(c) of the Specific Relief Act, 1963 is concerned, the Arbitrator holds the same would not apply in the facts of the present case as



the contract was not determinable unilaterally at the instance of the appellant, but only for specific defaults. He further holds that grant of interim relief would, in the present case be a “Just” exercise of the power of the Tribunal under Section 17(1)(e) of the Arbitration and Conciliation Act, 1996. He further holds that in the present case the respondent is not seeking specific performance of the agreement and is only challenging the wrongful termination of the same by the appellant. The Arbitrator relying upon the judgment of this Court in Upma Khanna v. Tarun Sawhney held that in the present case denial of the interim protection to the respondent would in fact, amount to allowing the party committing the wrong to take advantage of its own neglect and default.

16. In the present case, as observed above, the Arbitrator has held that the respondent has been able to make out a strong prima facie case in its favour based on Clause 22.4 of the License Agreement which restricted the right of the appellant to terminate the License Agreement only in the event of three consecutive defaults by the respondent to pay the license fee. Even before me, it is not contended by the counsel for the appellant that there was any default committed by the respondent in the payment of the license fee.



17. It is the contention of the counsel for the appellant that the license fee payable under Clause 6.1 of the License Agreement is on a revenue share basis and provides for a “minimum guarantee” amount, whichever is higher. He submits that as the respondent had failed to install the Diesel Generator set as obligated on it under Clause 9.1 of the License Agreement, there was a loss of revenue earned by the respondent, which resultantly leads to a loss of license fee in favour of the appellant. He therefore submits that this itself would mean that the respondent has not paid the license fee in accordance with Clause 6.1 of the License Agreement.

21. It is further contended by the counsel for the appellant that even assuming that the termination of the agreement by the appellant is illegal, as the respondent can be compensated in terms of money, respondent would not be entitled to grant of injunction in its favour. On the other hand, the learned senior counsel for the respondent submits that the respondent had made huge investment in the property based on the assurance of the long period of license as provided in the License Agreement. He further submits that the property was being used for commercial purposes and the respondent has acquired a goodwill in the same. He submits that the respondent, therefore, cannot be compensated in terms of money.



22. *In Old World Hospitality Pvt. Ltd. (Supra)* this Court had rejected a similar contention as raised by the appellant, observing as under:—

“114. *In the Law of Contract* by Hugh Collins 2nd Ed. 1993 the learned Author has posited as under:

“Although the Courts still repeat the rule that damages must be inadequate before they will award an order for compulsory performance, the” rule has been subtly modified in recent years. In *Beswick v. Beswick*, (1968 AC 58), an elderly and ailing coal merchant sold his business to his nephew in return for various promises including a promise to pay his widow Pond 5 per week after his death. When the nephew refused to pay, the widow in her capacity as administratrix of her husband's estate claimed specific performance of the contract. Since the estate had lost nothing by the nephew's breach of contract, because the payments were owed to the widow personally, it was likely that the measure of damages would be nominal. The House of Lords ordered specific performance of the contract even though an award of nominal damages would have covered all the losses of the estate. The Court made the award of compulsory performance because they thought that it achieved a just result, for otherwise the nephew would have been unjustly enriched by being entitled to hold onto his uncle's business without paying his aunt penny. The modern



judicial test asks the question : is it just in all the circumstances that the plaintiff should be confined to his remedy in damages?”

This test squarely raises the issue of describing the circumstances which induce a Court to find the award of the remedy of specific performance more just than damages.

The key to the law of compulsory performance lies in recognizing that such a remedy is not designed to compensate the injured party for the losses, but to force performance of the contract. Normally a Court declines to order performance because damages provide a sufficient incentive to complete most contracts except where the defendant hopes to achieve unusual economic benefits from breach, in which case to compel performance would only serve to discourage contracts and to reduce the combined wealth of the contracting parties. A remedy of compulsory performance, therefore, deliberately overrides these normal considerations concerning remedies in order to serve different policies. Courts use orders of compulsory performance to resist exploitation of relations of domination and to prevent unfair outcomes arising from break of contract.

In amplifying further, the learned Author has pointed out the question of fairness would also arise. Again the Author has said:

“A concern for fairness has also motivated the use of



compulsory performance in a few cases. We saw considerations of distributive justice influence the Court in Beswik v. Beswick, to prevent the nephew from being unjustly enriched at his widowed aunt's expense. The order for specific performance of the payment of an annuity prevented the nephew from obtaining the business without having to pay for it. The most common kind of case where compulsory performance is ordered for distributive purposes involves transactions for the transfer of an asset which will provide an opportunity to earn an uncertain income. If the injured party cannot prove his losses with sufficient certainty to satisfy the compensatory principle, a Court may order specific performance. For example, an injured party may be able to enforce a sale of shares which would give him control over a Corporation, because damages for his loss of the right to control the Corporation are too speculative to be compensatable. Similarly, the loss of the right to be an exclusive distributor of a product may lead to the loss of goodwill and trade reputation, items which are hard to quantify under the compensatory principle, but which can be protected by an injunction. The fundamental problem here is not that damages are inadequate to cover these kinds of losses but that the losses cannot be proven, and in order to overcome these evidentiary difficulties, the Courts are prepared to order compulsory performance where this will lead to a fair



distributive consequence.

These examples of oppression through bilateral monopoly and dependence, and injustice in the outcome of awards of damages, do not exhaust the occasions when an order for specific performance may achieve what the Court perceives to be more complete justice between the parties. The Courts reserve a discretion to award compulsory performance whenever it seems appropriate to do justice in the case.”

115. In Halsbury's Laws of England Vol. 44 4th Edn., the statement of law is in the following terms:

“In certain circumstances the Court may even grant a mandatory injunction directly requiring a party to the contract to perform his contractual obligations either on an interlocutory application or at the trial of the action.” The footnote given in this Volume there is considerable law on the point and the same is in the following terms:

“Smith v. Peters, (875) Lr 20 Eq 511, where a vendor was ordered to give a valuer access to premises; Sky Petroleum Ltd. v. Vip Petroleum Ltd., (1974) 1 All Er 954, (1974) 1 WLR 567, where the defendants were ordered not to withhold supplies of motor fuel from the plaintiffs; filling stations, no alternative sources of supply being available; Astro Exito Navegacion S.A. v. Southland Enterprise Co. Ltd. (Chase Manhattan Bank N. Aintervening). The Messinikai Tolmi (1982) 3 All ER 335, (1982) 3 WLR 296,



Ca (cited in Practice And Procedure, Vol. 37, para 361), where the buyers of a ship were ordered to sign a notice of readiness in order to enable money secured by a confirmed letter of credit to be paid out before the expiration of the letter. See also Acrow (Automation) Ltd. Rex Chainbelt Inc (1971) 3 All Er 1175, (1971) 1 WLR 1676, CA. Puddephat v. Leith (1916) 1 Ch 200, where a shareholder was ordered to exercise voting rights in accordance with a contractual undertaking (Greenwell v. Porter (1902) 1 Ch 530, where an injunction was granted restraining shareholders from voting contrary to their undertakings): Bourne v. Me Donald, (1950) 2 Kb 422, (1950) 2 All Er 183, Ca, where the defendant was ordered to carry out his contractual undertaking to build a fence in an action commenced in a country Court but not within the Court's statutory jurisdiction relating to specific performance.”

116. In Chave v. Breamer, 1976 Q.B. 76, Rosekill learned Judges said “In principle contracts are made to be performed and not to be avoided according to whims of the market fluctuations where there is a free choice between the two possible constructions of a contract, I think the Court should tend to prefer the construction which will infer performance and not encourage avoidance of contractual obligations.”

23. In the present case, the respondent has clearly made out



a case which falls in the exception to the rule as provided in Section 14(1)(a) of the Specific Relief Act, 1963.

24. Similarly, reliance of the appellant on Section 14(1)(c) of the Specific Relief Act, 1963 is also ill-founded. In the License Agreement, there is a specific prohibition on the appellant from terminating the agreement “except” in the case of three consecutive defaults in the payment of the license fee by the respondent. In view of the prohibition, it cannot be said that the agreement is determinable by its very nature. This Court in Upma Khanna (Supra) after analyzing Section 14(1)(c) of the Act has held as under:—

“15. What is the meaning of the expression : a contract which is in its nature determinable.

16. The New Shorter Oxford English Dictionary defines “determinable” to mean, if used as an adjective, fixed, definite. As a general meaning, to mean: “liable to come to an end”. The dictionary by Jowitt's, Second Edition explains determinable: “an interest is said to determine when it comes to an end, whether by limitation, efflux of time, merger, surrender or otherwise”. Thus, it is possible to argue that for whatever reasons it may be the cause for, if an interest comes to an end by efflux of time, a contract would be determinable in nature. This would be an argument in support of the appellants, and as urged.



17. But, the argument overlooks the concept of a fault liability and a fault effect and a no fault liability and a no fault effect. It overlooks the point that one should not rush to conclusions. Clause (c) uses the expression “in its nature determinable” and does not throw any light whether the determination contemplated embraces a fault effect determination.

18. If a defence by a contracting party that the sufferance of the default and hence the determination of the contract is to be accepted, it would amount to allowing the party committing the wrong to take advantage of its own neglect and this would ex-facie not be acceptable to a court of equity.”

25. In fact, Clause 22.4 of the License Agreement would also amount to a negative covenant, which can be enforced under Section 42 of the Specific Relief Act, 1963. In *Gujarat Bottling Co. Ltd. v. Coca Cola Company* (1995) 5 SCC 545, Supreme Court has held as under:—

“47. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated.

Under Order 39 of the Code of civil procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the



party invoking the jurisdiction of the court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the CPC, but also in respect of the party approaching the Court for vacating the ad-interim or temporary injunction order already granted in the pending suit or proceedings.

48. Analyzing the conduct of the GBC in the light of the above principles, it will be seen that GBC, who was a party to the 1993 Agreement, has not acted in conformity with the terms set out in the said agreement. It was itself, prima facie, responsible for the breach of the agreement, as would be evident from the facts set out earlier. Neither the consent of Coca Cola was obtained for transfer of shares of GBC nor was Coca Cola informed of the names of persons to whom the shares were proposed to be transferred. Coca Cola, therefore, had the right to terminate the agreement but it did not do so. On the contrary, GBC itself issued the notice for terminating the agreements by giving three



months notice.

49. It is contended by Shri Nariman and in our opinion, rightly, that the GBC, having itself acted in violation of the terms of agreement and having breached the contract, cannot legally claim that the order of injunction be vacated particularly as the GBC itself is primarily responsible for having brought about the state of things complained of by it. Since GBC has acted in an unfair and inequitable manner in its dealings with Coca Cola, there was hardly any occasion to vacate the injunction order and the order passed by the Bombay High Court cannot be interfered with not even on the ground of closure of factory, as the party responsible, prima facie, for breach of contract cannot be permitted to raise this grievance.”

17. Mr. Malhotra, learned counsel relies on his reply and states that while the respondent has objection in going for arbitration, but the status-quo dated 05.05.2015 needs to be vacated.
18. He states that under Clause No. 6.10, the clause is standalone and it is exclusively within the domain of the respondent to take decision regarding the quality of the food supply.
19. He further states that assuming without admitting, that mandate of Clause No. 8.2 includes within itself the Clause Nos. 6.7 and 7.1 (meaning that a 15 day cure notice is required before invoking clause 6.10 and 7.1), the same has also been done by the respondent.
20. I have heard learned counsels for the parties.
21. To my mind, Clause No.6.10 is a standalone clause. The very fact that



Clause No. 8 only refers to Clause No. 7 shows that Clause No. 6.10 is not covered under Clause No. 8.

22. The same is also evident from reading of Clause No. 6.10, which permits the respondent to take a decision regarding the quality of food supply and if the respondent is of the view that the same is of sub-standard quality, the contract could be terminated without any previous notice to the licensee.
23. If the submission of Mr. Sethi, learned senior counsel is to be accepted, then the words “to forthwith terminate the license without any previous notice to the licensee” occurring in Clause 6.10 becomes otiose and meaningless.
24. Additionally, even assuming for the sake of arguments, that the respondent before terminating the clause was required to give 15 day cure notice to the petitioner is concerned, to my mind, the same has also been done.
25. Annexure R2 shows that more than 321 complaints regarding the Train No.12801-02 received by the respondent. The complaints vary from overcharging, quality of food being unhygienic, cold and tasteless.
26. The respondent from 24.12.2024 has repeatedly being giving notices to the petitioner to bringing the complaints to their notice and additionally, calling upon them to “*improve the catering services and ensure substantial decrease in number of complaints in the forthcoming months*”. The said notices from 22.12.2024 are issued almost every month and it is only in May, 2025 that the contract has been terminated.



27. To my mind, the said notices are substantial compliance of Clause No. 8 of the said Agreement.
28. Additionally, the respondent also issued 2 separate showcause notices dated 03.04.2025 and 08.04.2025 and after a month thereof, has taken the extreme step of terminating the license.
29. I am of the view that the petitioner provides food to the passengers of the train and the quality of food, its hygiene levels, taste and quality are of utmost importance.
30. If the passengers are of the view and register complaints regarding the food being unhygienic, tasteless, cold, overcharged, the respondent is very much within its rights to terminate the contract and replace the petitioner.
31. Consequently, petition under Section 9 of the Arbitration and Conciliation Act, 1996 is dismissed and the order dated 05.05.2025 stands vacated.
32. The judgment of *Ascot Hotels and Resorts Pvt. Ltd.(supra)* is not applicable to the facts of the case as the in the said judgment the party was able to make a prima facie case against the termination of the Agreement. In the present case the respondent gave sufficient chances to the petitioner to cure the defects before terminating the Agreement between the parties. Moreover, the hygiene levels, taste and quality are of utmost importance and goes to root of the Agreement. Therefore the above judgment stands distinguished.



33. The petitioner requests and is granted one week from the date of release of the Order to handover the train in question to the respondents.

JASMEET SINGH, J

DECEMBER 12, 2025/sp
(Corrected and released on 16.12.2025.)