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

+ **FAO (COMM) 267/2025 & CM APPL. 58427/2025**

**INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED**

.....Appellant

Through: Mr. Ishan Dewan, Mr. V. Siddharth,
Mr. Shreyans Jain and Mr. Karan
Singh, Advs.

versus

M S R K ASSOCIATES AND HOTELIERS PRIVATE LIMITED

.....Respondent

Through: Mr. Kunal Tandon, Sr. Adv. with Mr.
Jasmeet Singh, Mr. Saif Ali, Mr.
Pushpendra S. Bhadoria, Mr. Rusheet
Saluja, Mr. Vijay Sharma, Mr. Pravan
Menon, Mr. Saurav and Ms. Natasha,
Advs.

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

15.09.2025

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CAV. 353/2025

1. Since respondent has entered their appearance, the Caveat stands discharged.

CM APPL. 58428/2025 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. Accordingly, application stands disposed of.

FAO (COMM) 267/2025 along with CM APPL. 58427/2025 (Interim Relief)

1. In exercise of powers under Section 9 of the Arbitration &



Conciliation Act, 1996 (*'A&C Act'*), an order was passed on 27th August 2025 by the learned Commercial Court, Patiala House Courts, New Delhi, in **OMP(I)(COMM) No. 97 of 2025**. *Vide* order dated 27th August 2025, learned Commercial Court issued the following directions:

“21. Accordingly, interim protection is required to preserve the rights of the parties. Resultantly, termination order dated 20.06.2025; and forfeiture of security deposit for the amount of Rs 25,000,00/- are stayed till the constitution of Arbitral Tribunal/till 90 days whichever is earlier. Till then, respondent is also restrained from taking any coercive action against the petitioner.”

2. Appellant (***respondent therein***) has approached this Court invoking the provision of Section 37(1)(b) of the A&C Act read with Section 13(1A) of the Commercial Courts Act 2015, challenging the order dated 27th August 2025 (***Impugned Order***).

3. Contentions *inter alia* are: (a) that respondent cannot force appellant to continue with the contract, as there are sufficient reasons forming the basis for termination of the contract/License Agreement; (b) that instead of preserving the subject matter of the dispute, the Commercial Court has directed a stay on the termination order dated 20th June 2025 and also a stay on forfeiture of the security deposit of Rs. 25,00,000/- for a period of 90 days and has further restrained appellant from taking any coercive action against the respondent (***petitioner therein***)

4. It is claimed that the provisions of Section 9 of the A&C Act provide for preservation of the subject property and not stay of termination order, which has the effect of restoring the contract in favour of the respondent. It is further urged that final relief granted by learned Commercial Court while



deciding Section 9 petition, is beyond the scope of the said provision.

5. As against above, counsel for respondent, drawing support from the judgment of learned Single Judge in the matter of ***KSL & Industries Ltd. v. National Textiles Corpn. Ltd.***, 2012 SCC OnLine Del 4189, urges that while dealing with the petition under Section 9 of the A&C Act, it is always open to the Court to examine whether basic principles of law viz. arbitrariness or a biased approach on the part of appellant are being properly considered. In fact, it is urged that, though the License Agreement contemplates a notice of 15 days to be served as per *Clause 10.1*, notice given was only for a short period, which resulted in denial of reasonable opportunity of hearing.

6. It is also urged that the net effect of the impugned order is preservation of property in sense that, by staying the termination, the property viz. the Executive Lounge operated by respondent, for and on behalf of appellant, shall continue and security deposit shall be kept intact. It is further claimed that appellant is restrained from taking any action, much less an action of blacklisting, in view of the notice of arbitration already issued by respondent. That being so, it is submitted that the impugned order is just and proper and does not call for any interference.

7. We have considered the rival claims in the light of the directions issued by the Commercial Court in *paragraph 21* of the impugned order. Such directions are to be tested in the light of the provisions of the Specific Relief Act, 1963.

8. The fact remains that the agreement in question provides for termination of the contract. Support can be drawn from *Clauses 3 and 3.1* of the License Agreement, which in categorical terms provide for the tenure of



the licence. The tenure of the licence for the Lounge is initially for a period of nine years from the date of commissioning of the unit, and the same can be extended for a further period of three years, subject to satisfactory performance and payment of dues, arrears, and a minimum increase of 10% of the existing licence fee.

9. In the case in hand, the contract was given effect to under *Clause 3.1* w.e.f. 25th May 2016. The initial period of nine years has, therefore, already expired.

10. However, it is the case of respondent that he is entitled to an extension of three years in view of *Clause 13*, i.e. Force Majeure, under the License Agreement.

11. Be that as it may, the extension, to which respondent is entitled to, can be investigated independently in the claim to be decided at the behest of respective parties. However, we are required to be sensitive to the terms of the contract with respect to termination. The termination in the present case is based on a Show-Cause Notice (*'SCN'*), wherein an explanation was tendered by respondent and reasoned order to that effect passed by appellant. Fact remains that respondent cannot force appellant to continue with the contract, as it is open for appellant under the License Agreement to terminate the agreement prior in point of time.

12. The material which forms the basis for termination of the contract in question, sufficiently speaks of the reasons for such termination. The reason may be not convenient or appealing to respondent, however, that by itself cannot be the reason to exercise powers under Section 9 of the A&C Act, for staying the termination. The remedy of respondent, in such an eventuality, in our opinion is to seek the compensation and damages, if any.



13. Notice issued by respondent seeking reference to Arbitration does not speak of respondent having claimed a relief of damages or compensation. However, we make it clear that respondent cannot be restrained from claiming such observation; however, for the purpose of deciding the petition under Section 9 we are required to be sensitive to the scope of the said provision and the powers to be exercised by the Commercial Court.

14. In the aforesaid background, we are of the view that the Commercial Court has exceeded its jurisdiction in directing stay on the termination as also directing stay on the forfeiture of security deposit for the amount of Rs 25,000,00/-.

15. That being so, we hereby modify the order impugned, particularly *paragraph 21* and direct that the appellant shall be permitted to manage the Lounge in question on its own, till the expiry of period of 90 days from the date of passing of this order. Subsequent thereto, appellant shall be free to deal with the said property in accordance with the relevant rules.

16. As regards the amount of Rs.25,00,000/- is concerned, we direct the same to be made in a fixed deposit within a period of 90 days from the date of the passing of this order.

17. As regards, the direction to not take any coercive action is concerned, we hereby qualify the same, thereby making it clear that till the proceedings under Section 17 of the A&C Act are taken up by either of the parties before the Arbitrator, appellant shall not pass any final order of blacklisting the respondent, if they had any such intention to do so.

18. The findings recorded by the Commercial Court, while passing the impugned order are *prima facie* in nature and shall not govern the proceedings before the Arbitrator, particularly the reasoning recorded by the



Commercial Court.

19. We further make it clear that the Arbitrator shall deal with the claim under Section 17 of the A&C Act without being influenced by the findings recorded by the Learned Single Judge in the impugned order.

20. The appeal, accordingly, stands partly allowed in above terms.

21. Accordingly, the present appeal stands disposed of. Pending applications, if any, are rendered infructuous.

22. Order be uploaded on the website of this Court.

NITIN WASUDEO SAMBRE, J

ANISH DAYAL, J

SEPTEMBER 15, 2025/MK/zb