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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 16.05.2025

+ **ARB. A. (COMM.) 70/2024**

M/SSINGH CATERERS AND VENDORSPetitioner

Through: Mr. Jitender Mehta, Mr. Lalit Kumar,
Mr. Shivam Pahal, Mr. Suraj Chandel,
Advs.

versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION
LIMITED & ORS.Respondents

Through: Mr. Vineet Dhanda, CGSC with Ms.
Akansha Choudhary, Ms. Shweta
Shandilay, Adv.
Mr. Saurav Agarwal, SC with Mr.
Anshuman Chowdhury, Mr. Aarya
Bhat, Mr. Shivam Choudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

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

1. This is an appeal filed under Section 37(2)(b) of Arbitration and Conciliation Act, 1996 ("**1996 Act**") challenging the conditions imposed by the learned Arbitrator *vide* its order dated 11.12.2024 to deposit and maintain Rs. 2,50,00,000/- in a bank account which would be free of any other encumbrances, lien or charge.
2. Brief facts are that the appellant is a partnership firm engaged in the business of Railway Catering & Hospitality. The respondent No. 3 issued the Standard Bid Document ("SBD") and invited bids for



catering license on Train No. 12391-92 Shramjeevi Express. The respondent No. 3 issued Letter of Award in favour of appellant regarding provision of Catering services on Train No. 12391-92, Shramjeevi Express. Consequently, Master Licence Agreement dated 26.02.2014 (“**MLA**”) was entered into by the appellant and the respondent No. 3. Relevant clauses of the MLA are extracted below:-

“8. ARTICLE 8 CHANGES IN MENU, TARIFF AND DURATION OF TRAIN

8.1

8.2

8.3 *In the case of any revision in catering tariff, the Licensee shall be allowed to sell food/meals at the revised rates to the passengers. In this event, the license fee payable to Railway shall be varied based on the re-assessment of sale from the date of revision of catering tariff.*

XXXXXXXXXXXX

20. ARTICLE 20 DISPUTE RESOLUTION

20.1 *In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement between the parties (“Disputes”), the parties shall firstly attempt to amicably resolve such Disputes through the highest level of negotiations and discussions.*

20.2 *In the event that Disputes between the parties subsist beyond 30 days of negotiations between the Parties, then the Dispute shall be settled as per the provisions of Arbitration and Conciliation Act 1996. The dispute shall be referred to:*



(a) Sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager of the Zonal Railway awarding the License. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference.

(b) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the matter aforesaid.

(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitrator at all.

(d) The arbitrator may from time to time with the consent of all the parties to the contract enlarge the time for making the award.

(e) Upon every and any such reference the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the arbitrator.

(f) Subject as aforesaid, the Arbitration and Conciliation Act, 1996 and the rules thereunder and any statutory



modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.

(g) The venue of the arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine

(h) In this clause the authority to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.”

(Emphasis added)

3. Thereafter, a Tripartite Agreement 16.08.2017 was signed between the appellant, respondent No. 1 and respondent No. 3 wherein the respondent No. 1 was assigned the MLA. Clause 8.9 of the said Agreement is the arbitration clause which reads as under:-

“8.9. In case of any dispute the matter shall be referred for arbitration to a Sole Arbitrator to be appointed as per Arbitration & Conciliation Act, 1996 as amended om time to time.”

4. By CC/60/2019, the Railway Board revised the tariff and the menu pursuant to which in terms of Clause 8.3, the appellant was required to pay the revised licence fee. Accordingly, on 11.08.2023, the appellant received demand notice of Rs. 1,73,90,739/- for Train No. 12391-92 and Train No. 12393-94. The operative portion of the demand notice reads as under:-



TRUE TYPED COPY

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No. IRCTC/EZ/ZO(MCS)/SALEASSESSMENT/ZO/EZ

DATE: 11-08-2023

M/S. SINGH CATERER & VENDORS

Kunwar House, Road No. 11.

Rajender Nagar,

Patna- 800016

Sub: Demand notice for Revised License Fee Post Sale Assessment in lieu of CC-60/2019

Ref: IRCTC/CO Letter No. 2019/IRCTC/Catg./SBD/Extension of license/PT-IV
Dated: 08-04-2022 & 08-02-2023

In reference to the above, M/S. SINGH CATERER & VENDORS was awarded temporary license for provision of on-board catering services in Train No. 12391-92 (RGDNDLS SHRAMJIVI EXPRESS) & Train No. 12393-94 (RJPB NDLS SAMPOORNKRANTI EXPRESS)

Further on issuance of instructions from CO/IRCTC vide letters under reference, EZ has calculated Revised License fees on the basis of assessment of sales in Post paid SBD & Non-SBD Trains in lieu of CC-60/2019.

Payable amount for train no.12391-92(ANNEXURE-I)	66,10,091.00
Payable amount for train no.12393-94 (ANNEXURE-II)	1,07,80,648.00
NET PAYABLE AMOUNT (Rounded off)	1,73,90,739.00

In view of the above, you are hereby directed to immediately remit the balance licensee Fees to the tune of 1,73,90,739.00 (One Crore Seventy-three Lakhs Ninety Thousand and Seven Hundred Thirty-nine only) as per Tender Terms and Conditions of the Contract, failing which EZ shall initiate punitive action as deemed fit.



(379)

Bank details of IRCTC, East Zone

Name-IRCTC Ltd.

Bank- IDBI Bank

A/c No.012102000012193

IFS Code-IBKL0000012

Branch-Siddha Point, Park Street, Kolkata

Detailed Calculations has been attached in Annexures (1&11)

This is for information and immediate compliance.

Manager (MCS)
IRCTC/EZ/Kolkata

Copy to:

1. GGM/MCS/CO/IRCTC
2. GGM/EZ for kind information please.
3. AGM/Fin/EZ
4. AGM/Catg/EZ
5. Pursuant to the said demand notice, the appellant invoked the arbitration clause by a legal notice dated 15.02.2024 to the respondents. Thereafter, the appellant filed section 9 petition challenging the demand notice. *Vide* Order dated 07.03.2024, this Court appointed an Arbitrator and directed the learned Arbitrator to treat this petition as section 17 application.
6. On 02.12.2024, the appellant filed an application under section 17 of 1996 Act which was decided by the learned Arbitrator *vide* order dated 11.12.2024. Operative portion of the said order reads as under:-



“5. The impugned demand arises out of Commercial Circular No. 60/2019 issued on 14.11.2019 (“CC-60”) having the effect of revising the license fees, the legality of which is questioned. By order dated 16.03.2024 in O.M.P. (I) (Comm.) 77/2024, the High Court while referring the dispute for adjudication to this arbitral tribunal, exercising jurisdiction under section 9 had directed that the application of the Claimant under said provision of law “will be considered by the learned Arbitrator as an application under Section 17 of the Act” and further as under:

.....

6. That the above was an ad interim arrangement made by the High Court, this tribunal being at liberty to consider request for the order to be vacated, varied or modified was expressly clarified in the order. The Claimant after filing SoC on 15.05.2024 moved an application under Section 17 on 02.12.2024, the prayers made wherein are similar to those pressed before the High Court.

7. The prime contention of the Claimant is that in absence of assessment of sales figures, the revision sought to be enforced is illegal, there being instead a case for refund as the sales have dipped over the period particularly in the wake of covid pandemic and so excess fees has been realised by IRCTC. Whilst IRCTC bases its claims for revised license fees enhancing the burden on the license based on sales figures assessment duly made, the Claimant raises its



contentions on basis of its own computation. Both sides will need to adduce evidence in support of their respective positions and at this stage a definitive view either way cannot be taken.

8. The learned Counsel for the first Respondent was right in submitting that even if it were assumed that there is a prima facie case established (though he would not concede this), the Claimants cannot have a blanket stay without the interests of the Respondent being protected and secured. He argued, and rightly so, that in a case of this nature, it cannot be said that the Claimant is likely to suffer irreparable injury since IRCTC is not insisting on payment but only guaranteed arrangement for payment in case the Claimant eventually fails on merits. The learned Counsel for IRCTC submitted that in order to secure and protect the interests of both parties the interim measures may include deposit by the Claimant of a specific sum of money – Rupees Two Crores Fifty Lakhs, as is the tentative assessment of the principal sum by IRCTC (based on subject demand up to 09.02.2023 and accruals claimed for the period thereafter) of liability of the Claimant towards differential on account of revised licence fees under CC-60 which has remained unpaid due to restraint order under section 9 so that the same becomes available recovery to IRCTC in case the Claimant were to fail in establishing its case in the SoC.

9. The proposed modification of the measures put in position



under Section 9 of the Arbitration and Conciliation Act, 1996 by Hon'ble High Court by order dated 16.03.2024 in O.M.P. (I) (Comm.) 77/2024, are found to be just and fair interim measures to be adopted.

10. Thus, in partial modification of the interim measures directed by the High Court by order dated under Section 9, the following order is passed, without prejudice to the respective contentions and rights of the parties:

(i) The Claimant shall deposit and maintain a credit balance of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs only) in a bank account which shall be free of any other encumbrance, lien or charge;

(ii) The Claimant shall formally intimate to the Manager of the concerned bank where the above-mentioned deposit is made, with reference to this order, an undertaking to maintain the above-said specified amount, till further orders from this tribunal;

(iii) The Claimant shall submit a compliance report to this tribunal, endorsing a copy to the Claimant, furnishing therewith a copy of the intimation to the bank in above terms showing due receipt and acknowledgment by the bank;

(iv) The Claimant shall be duty bound to furnish to this tribunal, on quarterly basis, under an affidavit, a certificate issued by the bank confirming that the balance as mentioned above is duly mentioned, endorsing a copy thereof to the Claimant each time, the first such declaration to be made by



07.04.2025 for the quarter ending with 31.03.2025, next by 07.07.2025 for the quarter ending with 30.06.2025, and so on.”

(Emphasis added)

7. Mr. Mehta, learned counsel for the appellant states that the demand notice has been issued without disclosing the revised sales assessment sheets and its data. Therefore, the alleged demand notice is without any basis.
8. He further submits that for staying the demand notice amount of Rs. 66,10,091/-, the learned Arbitrator has without any basis and calculation imposed the condition that the appellant should deposit the amount of Rs. 2,50,00,000/-. Hence, there is no justification for imposing harsh condition for staying the demand notice amount of Rs. 66, 10,091/-. Also, the alleged amount of Rs. 2,50,00,000 is not even mentioned in the Statement of Defence.
9. *Per Contra*, learned counsel for the respondent submits that the appellant wants to unjustly enrich itself and take advantage of the significant increase in catering tariff by CC/60/2019 but does not want to bear the higher license fee in terms of the contractual arrangement between the parties. If the appellant is not willing to pay the revised catering license fee, then the Appellant should not have accepted the revised catering tariff, while it fully knew that it has to pay the higher license fees. The impugned order does not require any interference and the learned Arbitrator has granted interim relief to the appellant in a fair and equitable manner by balancing equities.
10. I have heard learned counsel for the parties.



11. In the present case, Clause 8.3 of MLA quoted above clearly shows that in case of revision of tariff, the respondent has to 're-assess the sale made by the appellant' pursuant to the tariff revision. Even though the catering tariff has increased, there is no re-assessment made by the respondent as to the increase in sale made by the appellant. The notice dated 11.08.2023 is merely a demand without there being any supporting documents to justify how the said figure of Rs. 66,10,091/-has been arrived at for Train No. 12391-92.
12. It is relevant to mention here that the appellant is not challenging the increase in tariff of Train No. 12393-94 as that is the subject matter of another arbitration proceeding.
13. Even though, Mr. Chowdhury, learned counsel for respondent No. 1 has handed over an affidavit of their witness showing the calculation made for increase in tariff, the same was not available before the learned Arbitrator when the impugned order dated 11.12.2024 was passed. Additionally, the affidavit showing the calculation is not admitted by the appellant and the same requires to be proved in accordance with law.
14. From the aforesaid discussions, it seems that though the learned Arbitrator is seized of the matter but is yet to come to the conclusion as to whether the amounts are due and payable by the appellant to the respondents. There is no allegation in the Statement of Defence or in the reply to application filed under section 17 of 1996 Act that the appellant is going through tough financial times or is unable to meet its debt obligations.
15. For the said reasons, passing of a direction for keeping Rs. 2,50,00,000



crores unencumbered in a bank account is arbitrary and unwarranted as the same will adversely affect the working capital of the appellant.

16. Additionally, the Hon'ble Supreme Court in ***Sanghi Industries Ltd. v. Ravin Cables Ltd.***, 2022 SCC OnLine SC 1329 observed as under:-

“4. Having heard learned counsel appearing on behalf of the respective parties and in the facts and circumstances of the case, more particularly, when the bank guarantees were already invoked and the amounts under the respective bank guarantees were already paid by the bank much prior to the Commercial Court passed the order under Section 9 of the Arbitration Act, 1996 and looking to the tenor of the order passed by the Commercial Court, it appears that the Commercial Court had passed the order under Section 9(ii)(e) of the Arbitration Act, 1996 to secure the amount in dispute, we are of the opinion that unless and until the pre-conditions under Order XXXVIII Rule 5 of the CPC are satisfied and unless there are specific allegations with cogent material and unless prima-facie the Court is satisfied that the appellant is likely to defeat the decree/award that may be passed by the arbitrator by disposing of the properties and/or in any other manner, the Commercial Court could not have passed such an order in exercise of powers under Section 9 of the Arbitration Act, 1996. At this stage, it is required to be noted that even otherwise there are very serious disputes on the amount claimed by the rival parties, which are to be adjudicated upon in the proceedings before the arbitral



tribunal.

5. The order(s) which may be passed by the Commercial Court in an application under Section 9 of the Arbitration Act, 1996 is basically and mainly by way of interim measure. It may be true that in a given case if all the conditions of Order XXXVIII Rule 5 of the CPC are satisfied and the Commercial Court is satisfied on the conduct of opposite/opponent party that the opponent party is trying to sell its properties to defeat the award that may be passed and/or any other conduct on the part of the opposite/opponent party which may tantamount to any attempt on the part of the opponent/opposite party to defeat the award that may be passed in the arbitral proceedings, the Commercial Court may pass an appropriate order including the restrain order and/or any other appropriate order to secure the interest of the parties. However, unless and until the conditions mentioned in Order XXXVIII Rule 5 of the CPC are satisfied such an order could not have been passed by the Commercial Court which has been passed by the Commercial Court in the present case, which has been affirmed by the High Court.”

17. It has been categorically observed by the Hon'ble Supreme Court that before passing any interim orders, the Court must be satisfied with the conditions as mentioned under Order XXXVIII Rule 5 of CPC. In the present case, the learned Arbitrator has completely ignored such principles.



18. I am, therefore, unable to agree with the observations of the learned Arbitrator in the order dated 11.12.2024. Consequently, the appeal is allowed and the order dated 11.12.2024 is set aside.
19. The observations made hereinabove are only for deciding the present appeal and will have no bearing on the pending arbitration proceedings.
20. The respondents are always at liberty to avail all their legal rights in accordance with law.
21. The petition is disposed of.

JASMEET SINGH, J

MAY 16, 2025/DM

(Corrected and released on 26.05.2025)

Click here to check corrigendum, if any