

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.O. No. 861 of 2025

Cressanda Railway Solutions Limited & Anr.

Vs.

Eastern Railway & Ors.

Mr. Debnath Ghosh, Sr. Adv.

Mr. Soumava Mukherjee

Mr. Indranil Munshi

....For the petitioners.

Mr. Brajesh Jha

Ms. Sumita Sarka

....For the Union of India.

Hearing Concluded On : 29.01.2026

Judgment on : 05.02.2026

Krishna Rao, J.:

1. The petitioners have filed the present writ application challenging the impugned order issued by the Chief Commercial Manager /FM of the Eastern Railway dated 29th October, 2025 by terminating the contract

awarded to the petitioners with immediate effect, consequently, Security Deposit was also forfeited and it was also ordered for initiation of recovery proceedings of the outstanding dues.

2. The respondent authorities have floated an e-tender inviting bids from eligible bidders for *“Provision of Advertisement in EMU Trains and provisions of concierge service together with advertisement in Mail/ Express and Premium Trains operated with rakes whose primary maintenance is done by Eastern Railway, on license basis”*. The petitioner no. 1 has participated in the said tender process and found eligible and awarded with a Work Order on 17th May, 2023.
3. Subsequent to issuance of work order, a bid agreement was executed between the parties on 6th September, 2023. The tenure of the said agreement was for a period of five years from 17th July, 2023 till 16th July, 2028.
4. Mr. Debnath Ghosh, Learned Senior Advocate representing the petitioners submits that upon execution of the agreement, the petitioners have taken necessary steps for commencement of their work but the railway authorities have failed to perform their contractual obligations by providing and preparing a schedule for execution of display of advertisement materials during their lying over period a rake at car shed/ siding. He submits that only after discharge of such initial obligation on the part of railways the reciprocal obligation on the part of the petitioners could have commenced.

5. Mr. Ghosh submits that as per agreement, the railway divisions must ensure to plan in such a manner that display work can be completed by the licensee within sixty days from receipt of the work order but such contractual obligation was never discharged by the concern railway divisions. He submits that the petitioners have made several representations to the railway authorities highlighting the petitioners' inability to comply with professional commitments due to non-availability of required rakes.
6. Mr. Ghosh submits that all of a sudden on 13th May, 2025, the railway authorities issued a demand notice to the petitioners claiming an amount of Rs. 4,98,53,942/- which includes liquidated damages for 2nd quarter of 2nd year and 3rd quarter of 2nd year along with the license fee of 4th quarter of 2nd year. On receipt of the said demand notice, the petitioners have made comprehensive representation on 19th May, 2025 for adjustment of license fee as per Clause C5 of the work order and Clause 3.2.4 and sub-clauses 1, 2, 3 and 4 of the license agreement dated 6th September, 2023. As the railway authority failed to consider the request of the petitioners, the petitioners have filed a writ petition before this Court being WPA No. 11491 of 2025 challenging the impugned notice. The Coordinate Bench of this Court disposed of the writ application directing the respondent no.2 to take decision on the representation of the petitioners within 10 days from the date of receipt of the order.

- 7.** Mr. Ghosh submits that the in terms of the order passed by this Court, the railway authority fixed the matter for hearing on 26th June, 2025 and the petitioners have participated in the said hearing and also filed detailed representation. He submits that without considering the grievances of the petitioners, the railway authority has passed an order on 26th August, 2025, rejecting the claims of the petitioners.
- 8.** Mr. Ghosh submits that on 3rd September, 2025, the petitioners again received a demand notice from the railway authorities claiming an amount of Rs. 9,69,90,228/-. After receipt of the said demand notice, the petitioners have filed an arbitration application before this Court being AP No. 169 of 2025 praying for interim order restraining the respondents from taking any action for terminating the contract of the petitioners for non-payment of the amounts claimed by the railway authorities. On receipt of the application, the respondents impudently proceeded to terminate the contract by a letter dated 17th September, 2025.
- 9.** The Coordinate Bench of this Court by an order dated 18th September, 2025, stayed the operation of the letter dated 17th September, 2025, for a period of three months and directed the petitioners to invoke arbitration within the said period to constitute a Tribunal. The Court further stayed the order of termination unconditionally till 10th October, 2025 and directed the petitioners to secure Rs. 9,69,90,228/-. The Court directed the petitioners to deposit Rs. 1 crore by way of demand draft and shall furnish an unconditional bank guarantee of the balance

amount. It is further ordered that in case of non-compliance, the order shall stand automatically vacated without any further reference to this Court and the railway authorities shall proceed in accordance with law.

- 10.** In compliance of the order dated 18th September, 2025, the petitioners have submitted a Demand Draft of Rs. 1 Crore on 7th October, 2025 but the petitioners have not provided unconditional bank guarantee of the balance amount. The petitioners have taken out an application for extension of time for submission of bank guarantee being G.A. No. 2 of 2025 but the respondents without waiting for disposal of the said application have terminated the contract of the petitioners by a communication dated 29th October, 2025 which is impugned in the present writ application.
- 11.** Mr. Ghosh submits that the impugned order of termination is issued in violation of Clauses 4.5 and 4.6 of the bid agreement dated 6th September, 2025. He submits that the respondents ought to have issued a notice to the petitioners in terms of Clause 4.5 or 4.6 of the bid agreement.
- 12.** Mr. Brajesh Jha, Learned Advocate representing the respondents submits that the Railway Authorities have issued a notice to the petitioners on 17th September, 2025 by invoking Clauses 2.2.5, 2.2.6 and 2.2.7 of the bid agreement informing the petitioners that the petitioners failed to abide by the provisions of agreement and failed to clear the outstanding dues and accordingly the agreement dated 6th

September, 2023, is terminated and security deposit furnished by the petitioners is forfeited and further recovery proceeding will be initiated against the petitioners to realize the outstanding dues.

- 13.** Mr. Jha submits that being aggrieved with the notice dated 17th September, 2025, the petitioners filed an Arbitration Petition and this Court has not set aside the said notice, only stayed the operation of the said notice for three months with the direction to the petitioners to secure an amount of Rs. 1 Crore and for the balance amount, the petitioners were directed to furnish unconditional bank guarantee but the petitioners have only secured Rs. 1 Crore and not furnished unconditional bank guarantee, thus the impugned notice dated 29th October, 2025, was issued.
- 14.** Mr. Jha submits that as the Railway Authorities have already issued notice under Clause 2.2.5, 2.2.6 and 2.2.7 and this Court has not set aside the said notice, thus there is no necessity to issue further notice under Clauses 4.5 or 4.6 of the agreement.
- 15.** Mr. Jha submits that prior to the notice dated 17th September, 2025, the respondents have also issued notice to the petitioners on 3rd September, 2025, directing the petitioners to deposit the amount but the petitioners have not deposited the same and finally notice dated 17th September, 2025, was issued.

- 16.** Mr. Jha further submits that after termination of contract of the petitioners, the Railway Authorities have already awarded the tender to some third party with respect to the same work.
- 17.** Mr. Jha submits that the Coordinate Bench of this Court by an order dated 18th September, 2025, specifically held that in case of noncompliance of the order, this order shall stand automatically vacated without any further reference to this Court and the Railway Authorities shall proceed in accordance with law, thus the petitioners have not secured unconditional bank guarantee inspite of the time extended by the Court, thus the impugned notice is issued on 29th October, 2025.
- 18.** The only grievance of the petitioners in the present writ application is that though the petitioners have not secured unconditional bank guarantee of the balance amount in terms of the order passed by the Coordinate Bench of this Court dated 18th September, 2025 but the respondent authorities ought to have issued notice to the petitioners under Clause 4.5 or 4.6 of the bid agreement which provide either one month's notice or 60 days' notice. As per the case of the petitioners, the impugned notice is issued in violation of Clause 4.5 or 4.6, thus the notice is liable to be set aside.
- 19.** Before issuance of notice dated 17th September, 2025, the Railway Authorities have issued notice on 3rd September, 2025, requesting the petitioners to deposit the outstanding dues within 7 days failing which

the Eastern Railway shall take action by invoking Clauses 2.2.5, 2.2.6 and 2.2.7 of the bid agreement dated 6th September, 2023 including (i) Termination of Contract with immediate effect and (ii) Forfeiture of the Security deposit and recovery of further dues as per law.

20. Being aggrieved with the said notice, the petitioners have filed Arbitration Petition and in the meantime, the Railway Authorities issued another notice dated 17th September, 2025 by terminating the agreement by invoking Clause 2.2.5, 2.2.6 and 2.2.7 and security deposit was also forfeited with the further intimation that recovery proceeding will be initiated to realize the outstanding dues.

21. The Coordinate Bench of this Court passed the following order on 18th September, 2025:

“Under such circumstances, taking a holistic view of the entire situation, this Court stays the operation of the letter dated September 17, 2025 for a period of three months. The petitioner shall invoke arbitration within the aforesaid period and constitute a Tribunal. The order of termination shall remain stayed unconditionally till 10th October, 2025, within such time the petitioner will secure Rs.9,69,90,228/-. The petitioner shall deposit Rs. 1 crore by way of demand draft in the office of the Principal Chief Commercial Manager, Eastern Railway, 3, Koilaghat Street, Kolkata and also furnish an unconditional bank guarantee of the balance amount. By this process, the entire claim will be secure. The demand draft shall be encashed and invested in an auto renewable interest bearing foxed deposit account, maintained with any nationalized bank. If the payment as directed hereinabove is made, the unconditional stay will continue for a period of three months or until further orders by the arbitrator, whichever is earlier. In case of non-compliance, this order shall

stand automatically vacated without any further reference to this Court and the Railway Authorities shall proceed in accordance with law.

Needless to state that future license fees for the succeeding periods shall be paid until further orders by the arbitral tribunal.

Both the parties will be at liberty to pray for further interim order before the learned arbitral tribunal.”

- 22.** Admittedly, the petitioners have only deposited an amount of Rs. 1 Crore but have not secured unconditional bank guarantee and accordingly on 29th October, 2025, the respondents have issued the impugned notice by terminating the contract and by forfeiting the security deposit with further condition that the Railway Authorities will initiate recovery proceeding to realize the outstanding dues.

- 23.** Clauses 2.2.5, 2.2.6, 2.2.7, 4.5 and 4.6 reads as follows:

“2.2.5 *If the successful bidder fails to pay the license fee and other charges on due date, the successful bidder is liable to pay liquidated damages at the rate of 18 percent per annum on the due amount for the unpaid period. However, if the payment is not made within a month after due date, the Railway Administration will be at liberty to terminate the contract.*

2.2.6 *In the event of failure on the part of the successful bidder towards payment of License fee or any other charges due to the Railway Administration, the Railway Administration will have the right to forfeit the Security deposit, encash the same towards the charges due without prejudice to any other right to recover for the balance amount if fallen due.*

2.2.7 *Further, if the successful bidder fails to remit the dues as stated above, the Railway*

Administration reserves the right to confiscate the equipment, machinery and other materials of the successful bidder without prejudice to any other rights available with the Railway Administration duly forfeiting the security deposit and to initiate eviction proceedings for getting the Railway premises vacated and take action for the recovery of all dues.

4.5 Termination of Contract – *In case (s) of breach of contract/defaults, as defined below, the contract can be terminated prematurely after serving 1 (one) month show cause notice. Following will constitute breach of contract:*

- a. Non-payment of License fee within one month of due date.*
- b. Repeated Non-compliance of contractual obligation.*
- c. Indulging corrupt or corrosive practices.*
- d. Violation of conditions as stipulated in the Conditions of the Contract.*
- e. Engaging in unlawful activities.*
- f. In case of recurrence of deficiencies attracting penalties as indicated in (iv) below, Railways will be free to terminate the operation of the contract in the said train as a penal measure for the remaining period of the contract for which there will be no reduction of License Fee for non operation of contract in that particular train.*

4.6 Right to terminate the contract by parties

a. The Licensee will have the right to terminate the contract after serving 60 days' notice to Railway administration. However, the Licensee shall not be allowed to terminate the contract before one year (10 month + 2 months' notice period). In case he does so, his security deposit shall be forfeited and shall be debarred from entering into any tender of similar nature for next two years. But he shall be allowed to operate existing contracts if any. Exit from individual train will not be allowed.

b. Railway shall have the right to terminate the contract/agreement for any reason

whatsoever after serving one month's notice to the Licensee.

Railways shall also have the right to exclude any train from the purview of the contract by giving one month notice, if the same causes any inconvenience to the travelling public or for any reason whatsoever or any direction from railway administration in future. In all such cases proportionate license fee will be adjusted/refunded. Such exclusion may be done for on board services/advertisement or both as deem fit by railway administration.

c. However, Railway shall reserve the right to terminate the contract as a punitive measure without any notice and at any time in case of breach of agreement or serious violation of any of the stipulation of Policy/Railway's ruled by the licensee or in case of any exigency.

However, such instantaneous termination of contract by Railway administration should be followed by a written intimation of breach of contract within three working days of termination."

- 24.** Initially on 13th May, 2025, the Railway Authorities have issued a Demand Notice, requesting the petitioners to pay license fee for the 4th quarter of 2nd year and liquidated damages for late payment of license fee of the 2nd quarter of 2nd year and 3rd quarter of 2nd year. The said notice was challenged before this Court and this Court disposed of the said writ petition directing the respondents to consider the representations of the petitioners within 10 days and to pass a reasoned and speaking order. In terms of the order dated 18th June, 2025, passed in WPA No. 11491 of 2025, the respondents have passed a reasoned and speaking order dated 26th June, 2025, rejecting the request of the petitioners for withdrawal of the notice dated 13th May, 2025. The petitioners have not challenged the said order and

accordingly, the respondents have again issued a notice to the petitioners on 3rd September, 2025, requesting to deposit the outstanding dues within 7 days. In the said notice, it is categorically mentioned that if the petitioners will not pay the outstanding dues, appropriate action shall be taken in terms of Clauses 2.2.5, 2.2.6 and 2.2.7 of the Agreement.

25. The first notice was issued on 13th May, 2025. As per Clause 2.2.5 if the payment is not made within a month after due date, the railway authority will be at liberty to terminate the contract. The petitioners have not made payment in terms of the notice dated 13th May, 2025 and the said notice is also not quashed by any Court or any authority. Again, the petitioners were given seven days' time to pay the outstanding dues by a letter dated 3rd September, 2025 but the petitioners have not paid the same. The Coordinate Bench of this Court further directed that in case of non-compliance, the order of stay automatically vacated. Admittedly, the petitioners have not complied with the order by submitting unconditional bank guarantee of the balance amount.

26. This Court finds that the respondents have invoked the provisions of Clauses 2.2.5, 2.2.6 and 2.2.7 of the agreement and sufficient opportunity was given to the petitioners for payment of outstanding dues but the petitioners have not complied with the same inspite of the direction of the Coordinate Bench of this Court.

27. The respondent authorities have invoked the provisions of Clauses 2.2.5, 2.2.6 and 2.2.7 as the petitioners failed to pay license fee for the 4th quarter of 2nd year and liquidated damages for late payment of license fee of the 2nd quarter of 2nd year and 3rd quarter of 2nd year, thus Clause 4.5 or 4.6 of the Agreement is not applicable in the present case.

28. In view of the above, **WPO No. 861 of 2025** is **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)