



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 169 OF 2026

- | | | |
|--|---|-----------------------------|
| 1. Ambuj Hotel and Real Estate Pvt. Ltd. |] | |
| Through its Director Parth Singh |] | |
| Having residential address at : |] | |
| 7575/1, Ram Nagar, |] | |
| Paharganj, New Delhi – 110055 |] | |
| Email : sssisodialawoffice@gmail.com |] | <u>...Petitioner</u> |

Versus

- | | | |
|--|---|------------------------------|
| 1. Ministry of Railways |] | |
| Through its General Manager |] | |
| Off at : |] | |
| Rail Bhawan, Raifi Marg, |] | |
| New Delhi : 110001 |] | |
| Email ID : gm@nb.railnet.gov.in |] | |
| 2. Chief Commercial Manager, Catering |] | |
| Western Railways |] | |
| Off at : |] | |
| Commercial Department, |] | |
| Second Floor, Church Gate |] | |
| Mumbai : 400020 |] | |
| Email : shailendra.railway2010@gmail.com |] | <u>...Respondents</u> |

WITH

COMMERCIAL ARBITRATION PETITION NO. 836 OF 2025

- | | | |
|--|---|-------------------------------|
| 1. Ministry of Railway |] | |
| Through its General Manager |] | |
| Having office at Rail Bhawan, Rafi Marg, |] | |
| New Delhi : 110001 |] | |
| 2. Chief Commercial Manager, |] | |
| (Catering), Western Railways |] | |
| With its office at Commercial Department, |] | |
| 2 nd Floor, Churchgate, Mumbai : 400020 |] | <u>....Petitioners</u> |

Versus

M/s. Ambuj Hotels and Real Estate Pvt. Ltd.]

a Company incorporated under the provisions of]

Companies Act, 1956]

and having its office at 7575/1, Ram Nagar,]

Paharganj, New Delhi – 110 055.]

...Respondents

*Mr. Sandip Parikh, Mr. Ashok Singh, Mr. Sulalit Sisodiya and Mr. Pravin Singh for
Petitioner in CARBP No. 169 of 2026 and for Respondent in CARBP No. 836 of
2025.*

*Ms. Smita Thakur, Mr. Suresh Kumar for Petitioner in CARBP No. 836 of 2025
and for Respondent in CARBP No. 169 of 2026.*

Coram : Sharmila U. Deshmukh, J.

Reserved on : 24th March, 2026.

Pronounced on : 7th April, 2026.

Judgment :

1. Both these Petitions filed under Section 34 of Arbitration and Conciliation Act, 1996 [for short, ***“the Arbitration Act”***] challenges the impugned Award dated 8th May, 2023 as corrected on 5th June, 2023. Common submissions were canvassed and both Petitions are being disposed of by this common judgment.

FACTUAL MATRIX :

2. Commercial Arbitration Petition No. 169 of 2026 is filed by the Claimant being partly aggrieved by the impugned Award to the extent that it upholds the validity of termination of Master License Agreement [for short, ***“MLA”***] and rejects the claim for damages.

Commercial Arbitration Petition No. 836 of 2025 has been preferred by the Respondents aggrieved by direction in the impugned Award for refund of security deposit and license fees along with interest and payment of legal fees to the Claimant. For the sake of brevity, the parties are referred to as Claimant and Respondents.

3. The facts relevant for our purpose are that the Claimant is engaged in the business of providing on-board catering services to passengers on behalf of Indian Railways. The Respondents vide tender bid notice dated 30th December, 2014 invited the bids for providing catering services on the train "Swarna Jayanti Rajdhani Express". The Claimant's bid was accepted and the tender was awarded to the Claimant on 8th October, 2015. Due to pending litigation challenging the Catering Policy 2010 and interim stay granted, which was ultimately vacated on 16th February, 2016, there was delay in handing over the train to the Claimant to start on board services. On 30th March, 2016, the Claimant deposited the security deposit and license fees for two years. On 8th May, 2016, the concerned train was handed over to the Claimant for on-board catering services. On 30th May, 2016, the MLA was executed between the Claimant and Respondents governing the scope of arrangement.

4. On 9th March, 2017, Railways Board issued a departmental direction/order to General Manager, Western Railways, Mumbai to

terminate the claimant's catering contract with immediate effect in terms of Commercial Circular No. 20/2017 dated 27th February, 2017 and directions were issued to handover the train to IRCTC.

5. The Respondents issued notice dated 9th March, 2017 to the Claimant stating that during the period from 2015 to 2017, there were 133 complaints received against the Claimant and called upon the Claimant to show cause against termination. The contract came to be terminated on 29th March, 2017 which also forfeited the security deposit. The termination was challenged before this Court which travelled upto Hon'ble Apex Court and the Respondents were directed by this Court to give personal hearing to the Claimant. After hearing the Claimant, the Respondents again passed termination order on 20th June, 2017 and imposed the penalty of forfeiture of security deposit and annulment of license fees.

6. On 8th August, 2018, the Claimant called upon the Respondent to release/refund license fees and security deposit on *pro-rata* basis which request was rejected by the Respondents on 14th September, 2018. The Claimant invoked the arbitration clause of Master License Agreement and the dispute was referred to the Learned Sole Arbitrator.

7. The reliefs sought in the statement of claim were as under :

"1. Declare the show cause notice dated 09.03.2017 and

termination letters dated 29.03.2017 & 20.06.2017 as illegal, arbitrary, unfair and against the provisions of Master License Agreement dated 30.05.2016 and thus, the same be set aside and the claimant is entitled to get the renewal of the said license for the further period of 5 years.

2. Award an amount of Rs. 7,34,33,000/- (Rupees Seven Crores Thirty Four Lakhs Thirty Three Thousand Only) (Refund of License Fees + Security Deposit) in favour of the claimant towards the amount wrongfully withheld by the Respondents.

3. Award an Interest @12% per annum on Rs. 7,34,33,000/- (Rupees Seven Crores Thirty Four Lakhs Thirty Three Thousand Only) (Refund of License Fees + Security Deposit) till 17.02.2021 i.e. the date of filing of statement of claim.

4. Award Rs. 2,20,00,000/- (Rupees Two Crores Twenty Lakhs Only) against the loss of profit for 5 years calculated accordingly along with the interest @12% on the above said amount.

5. Award Rs. 3,50,00,000 (Rupees Three Crores Fifty Lakhs Only) along with the interest towards the investment in utensils and infrastructure in settling up of the base kitchens.

6. Award Rs. 50,00,000/- (Rupees Fifty Lakhs Only) against the loss of opportunity.

7. Award Rs. 50,00,000/- (Rupees Fifty Lakhs Only) against the compensation for Mental agony and harassment.

8. Award Legal and Arbitration Cost/expenses of Rs. 25,00,000/-- (Rupees Twenty five Lakhs Only) in favour of the claimant.

9. Award pendent-lite and future interest @12% on the total claim amounting Rs. 14,29,33,000/- (Rupees Fourteen Crore Twenty Nine Lakhs Thirty Three Thousand Only) (Claim no.2+4+5+6+7).

10. Pass any such or further orders in favour of the Claimant as the Ld. Sole Arbitrator deem fit and proper in the facts and circumstances of the case and interest of justice, equity and fairness."

8. The Respondents filed their statement of defense justifying the termination and raised a counter-claim for legal expenses of approximately of Rs.1,00,000/-. Evidence was led by the Claimant and

no evidence was led by the Respondent. By the impugned Award, the learned Arbitrator upheld the termination of MLA, rejected the claim for renewal of contract, rejected the claim for damages and directed the repayment of security deposit and refund of license fees to the Claimant along with interest @ 14%. p.a and legal expenses.

SUBMISSIONS:

9. Mr. Parikh, learned counsel appearing for Claimant would draw attention of this Court to the specific plea in the Statement of Claim disputing the imposition of penalty as being unverified and unpreceded by any inquiry. He submits that it was specifically pleaded that the penalty imposed was *ex-parte* decision without affording any opportunity of hearing and hence, *lis* was raised as regards the improper levying of penalty. He submits that despite thereof, the learned Arbitrator did not frame any point for determination as regards the improper levy of penalty. He submits that the Learned Arbitrator has characterized the dispute about penalty as background context and has held that the penalty being unchallenged constitutes implicit admission of rendering of poor services. He submits that the complaints were the reason for termination and not the background. He submits that if the complaints are held to be admitted, the Claimant had no leg to stand on. He submits that there was no evidence produced by Respondents to prove the complaints

which was the basis of termination. He would point out the Affidavit of evidence of Claimant's witness which specifically deposes in respect of improper levy of penalties and submits that in the absence of any cross examination on this aspect by the Respondents, the evidence remained uncontroverted. He submits that the specific case of the Claimant was that the complaints are unverified and that there is not even a suggestion that the Respondents were justified in levying the penalty. He submits that this evidence led by the Claimant had been ignored by the learned Arbitrator which constitutes patent illegality. He submits that as the termination was held to be valid, the claim for damages came to be rejected.

10. He would further submit that the Award is severable as the issue of repayment of security deposit and license fee is not linked with other part of the Award as regards the termination. He submits that the Claimant is not seeking specific performance of contract and was seeking damages for invalid termination of the contract.

11. He would further submit that insofar as the Respondent's Petition is concerned, the learned Arbitrator has rightly directed the refund of security deposit and license fees in accordance with the terms of MLA and has held that the same is independent of validity of the termination. He submits that the learned Arbitrator has rightly held that even if the termination is valid, there is no contractual right to

withhold or forfeit the security deposit and license fees. He submits that there was deduction of penalties and fines from running bills drawn by Claimant and hence no ground to sustain the forfeiture. He submits that the interest @14% p.a. was granted as Article 4.3 of the MLA provided for imposition of interest of 14% p.a. upon failures/delay in deposit of license fee by the Claimant. He submits that on the ground of parity, the same interest has been levied by the learned Arbitrator. In support, he relies upon the following decisions :

***ONGC vs. Saw Pipes Ltd.*¹**

***M/s. Kailash Nath Associates vs. Delhi Development Authority and Another*²**

***A. T. Brij Paul Singh and Others vs. State of Gujarat*³**

***Secretary of Irrigation Department, Govt. of Orissa vs. G. C. Roy*⁴**

***G. Sagar Suri vs. State of U.P.*⁵**

***OPTO Circuit India Ltd. vs. Axis Bank*⁶**

***Devchand Construction vs. Union of India*⁷**

***I.B.C. Patel vs. Harihar Behara*⁸**

***State of Maharashtra vs. S. N. Chawhan*⁹**

1 (2003) 3 SCR 69.

2 (2015) 1 SCR 627.

3 Civil Appeal No. 2054 of 1973, decided by Supreme Court on 25th July, 1984.

4 Civil Appeal No. 1403 of 1986, decided on 12.12.1991 by Supreme Court of India.

5 (2000) 1 SCR 418.

6 (2021) 2 SCR 81.

7 Order dated 16.02.2022 passed by Kerala High Court in Arbitration Appeal No. 29 of 2018.

8 (1999) 1 SCR 1097.

9 First Appeal No. 6 of 1975 decided by Bombay High Court on 22nd March, 1984.

***Union of India vs. V. Pundarikakshudu and Sons*¹⁰**

***State of Orissa vs. B. N. Agarwalla and Others*¹¹**

***PSA SICAC Terminals Pvt. Ltd. vs. The Board of Trustees*¹²**

***Delhi Metro Rail Corporation Ltd. vs. Delhi Airport Metro Express Pvt. Ltd.*¹³**

12. *Per contra*, Ms. Thakur, learned counsel appearing for Respondents would submit that the grounds set out in the Petition does not raise any ground of patent illegality under Section 34 (2)(a) of Arbitration Act. She submits that the statement of claim does not seek any refund of penalty imposed and hence, learned Arbitrator has rightly held that the penalties have remained unchallenged and has been accepted by the Claimant. She submits that as the termination is valid, the claim for damages has been rejected. She submits that after upholding the validity of termination, there could not be any direction for refund of security deposit and license fees. She submits that the refund of amounts is linked to termination and is not independent of termination. She has taken this Court through Articles 5.1, 5.2, 5.3 and Article 17.4 of MLA and would contend that apart from penalty, the Respondents had the right under the contract to forfeit the security

10 (2003) Supp. 3 SCR 506.

11 Civil Appeal Nos. 471 with 472 of 1997, decided on 29th January, 1997 by Supreme Court.

12 (2021) 5 SCR 408.

13 (2024) 4 SCR 473.

deposit. She would further submit that there is no basis for award of interest @ 14% p.a. on the refund of the amounts and no basis for saddling the Respondents with the legal expenses.

13. Rival contentions now falls for determination.

14. There was no claim raised by the Claimant challenging the imposition of penalties as being improper and seeking refund of the penalty amount. Mere pleadings in the Statement of Claim raising grievance about the penalty imposed without seeking further relief in that respect did not necessitate framing of an issue in that regard. The Learned Arbitrator has rightly considered the issues which arose for determination as regards the validity of termination, claim for damages and refund of security deposit and license fees and accordingly formulated the correct issues for determination.

15. The termination of the contract was governed by the terms and conditions of MLA. Article 18.3 of the MLA permitted the Respondents to terminate the contract in event of material breach by the Claimant and Article 16 defined material breach to include non provision of satisfactory services under the contract, if there was failure to adhere to the desired performance levels and if the Railway received persistent complaints against the Claimant from the passengers and otherwise. In paragraph 29 and 30 of the Statement of Claim, the Claimant has pleaded about the imposition of penalty/fine of Rs 8.72

lakhs based on the complaints received by the Respondents and the inspection carried out. It is also pleaded that from 29th November, 2016 to 6th December, 2016, the Respondents had received total of 6 complaints about quality of food and on that basis had penalised the Claimant by imposing penalty. It is pleaded in the subsequent paragraphs that the complaints were unverified and penalties were unilaterally imposed. As the persistent complaints constituted material breach entailing termination of the contract itself, it was necessary to raise a challenge to the penalty and seek refund of the same on the ground of the penalties being illegal and unwarranted. Without any such relief being claimed, the imposition of penalty as consequence of the persistent complaints constitutes admission of material breach and has been rightly held by the Learned Arbitrator as such in paragraph nos. 82, 83 and 84 which reads as under:

"82. The penalties themselves are not the subject matter of the arbitration in any way, shape or form. The Claimant does not deny the imposition of these penalties, nor their recovery from amounts owed to the Claimant. The Claimant has not challenged the levy of these penalties or sought their reimbursement. The Claimant's reference to these penalties is only by way of background and to provide context to its arguments on what it says is an illegal termination of the MLA.

83. The Claimant's argument is that once pecuniary penalties or fines are levied for unsatisfactory service, termination on the same ground is illegal and is akin to "double jeopardy." In short, the Claimant states that it has already been punished for bad service and termination for the same reason cannot ensue. This is an

argument of desperation. The MLA is determinable in nature and is a contract for provision of services. To suggest that the imposition of a penalty (itself unchallenged) forecloses the termination of a contract of this nature is entirely misplaced, particularly as the MLA not only provides for both eventualities but also contemplates a no-fault termination. The judgment in *G. Sagar Suri* does not assist the Claimant and neither does the decision in *OPTO Circuit*.

84. The Claimant has also relied on an Investigation Report issued by an office from the Railways in January 2017. However, this Investigation Report pertains only to a particular complaint made by one Mr. Mukesh Kumar on 13th January 2017. The other complaints-aggregating to over a hundred-have resulted in penalties that have remained unchallenged and have in fact been accepted by the Claimant. The Claimant's conduct constitutes an implicit admission of poor service on certain occasions. In view of this, the fact there has also been praise for the Claimant's services from other passengers does not provide a countervailing factor. Neither does the fact that the total number of complaints varies in some documents, being shown as 133 in some communication and 142 in others."

16. It is well settled that dispute arises when claim is made by one party and denied by the other. As there was no challenge to the imposition of penalty, mere pleading did not give rise to a *lis* in that respect between the parties. It is for the Claimant to raise appropriate challenges and seek appropriate relief and having failed to do so must suffer the consequences of such failure. In such eventuality, the Claimant cannot be heard to say that by reason of the dispute about the penalty not being adjudicated, there was nothing further to be done in the arbitration proceedings. The Claimant's case as put forth in the Statement of Claim implies admission of material breach and

resultantly, the Learned Arbitrator has rightly held that the penalties have remained unchallenged and have been accepted by the Claimant. The absence of cross examination of the Claimant's witness on the aspect of improper imposition of penalty is immaterial as the pleadings did not give rise to any challenge to the penalty imposed. It is also pertinent to note that while disputing the forfeiture of security deposit, Mr. Parikh takes help of the penalties/fines imposed and deducted from the running bills. A party cannot be permitted to blow hot and cold. Having taken the defence of the penalties imposed while assailing the forfeiture of security deposit, it is impermissible to then dispute the imposition of penalties.

17. The Learned Arbitrator has rightly held that the terms of the contract pertaining to the deductions made from the running bills are not required to be interpreted as the penalties themselves are not the subject matter of the arbitrator. There is no patent illegality demonstrated in the findings of Learned Arbitrator upholding the termination as there is proper consideration of evidence in the context of the issues arising for consideration and in accordance with the contractual arrangement.

18. The Claimant would be entitled to damages as a consequence of invalid termination of the agreement. As the learned Arbitrator has rightly upheld the validity of termination, there was no question of

grant of damages. Though Mr. Parikh has tendered number of decisions, he has relied only upon the decision in the case of ***Delhi Metro Corporation Limited vs. Delhi Airport Metro Express Private Limited*** (supra) setting out the well-settled contours of exercise of jurisdiction under Section 34 of Arbitration Act, with which there is no quarrel.

19. Insofar as the direction for refund of security deposit and license fees is concerned, the terms of the MLA would have to be perused. Article 5.1 of the MLA provides for the furnishing of security deposit for an amount equal to 10% of the total license fees. Article 5.3 provides that upon any default or breach of obligations by licensee , the Railways may at its sole discretion draw upon the security deposit to satisfy its claim against the licensee by imposition of penalties or otherwise, irrespective of any other remedy under this agreement. This clause is attempted to read by Ms. Thakur as conferring a right on the Railways to forfeit the security deposit. I am unable to interpret the said clause as interpreted by Ms. Thakur. Clause 5.3 permits the Respondent-Railways to draw upon the Security Deposit where there exists amounts due from the Claimant on account of penalties imposed which is evident from the expression “to satisfy its claims against the Licensee” used therein. In event the said clause was meant to confer right of forfeiture, the clause would have been worded differently

giving right to forfeit the security deposit upon material breach being committed. There was no necessity of making reference to the imposition of penalties and satisfaction of its claims against the licensee.

20. The learned Arbitrator has rightly considered Clause 5.2 to hold the security deposit operated as performance guarantee and gives right to the Respondents to make deductions in event the Railways have claims of its own by imposition of penalties, incurring of expenses and so on. The Learned Arbitrator rightly noted that there is no counter claim for loss or damages and that Railways had made various deduction of penalties and fines from running bills drawn by the Claimant. The Railways had thus recovered the loss or damage sustained and there is no pending claim for which the Railways could drawn upon the security deposit.

21. Before the Learned Arbitrator, the forfeiture of security deposit was sought to be supported by placing reliance on Article 17.4 (a) of MLA. Article 17.4 governs the penalties which may be imposed for breach which is not limited to forfeiture of security. The learned Arbitrator has held that the said clause providing for forfeiture is penal in nature and the provision for forfeiture of security deposit without cause is unenforceable in law. The Learned Arbitrator has interpreted the terms of the contract to mean that there is no right in the

Respondents to forfeit the security deposit, which cannot be interfered with in exercise of jurisdiction under Section 34 of Arbitration Act, unless there is error apparent shown. There is no submission canvassed to demonstrate erroneous application of law and the findings cannot be interfered with.

22. Insofar as license fees is concerned, Article 18.6 provides for forfeiture of entire license fees in event of termination of agreement by the Licensee under Article 18.4 of MLA, which is not the case here as it is the Railways which have terminated the agreement.

23. The learned Arbitrator has interpreted the terms of the contract and there is no error in jurisdiction. The upholding of validity of termination does not *ipso facto* result in forfeiture of the security deposit and license fees, which is governed by the terms of the contract. The impugned Award arises out of enforcement of terms of the contract.

24. As the contractual arrangement did not entitle the Railways to forfeit the security deposit and license fees upon termination, the Claimant was entitled to the said amounts upon termination. The Respondents having failed to refund the amounts, the Learned Arbitrator has directed the amount to carry interest from date of termination. The learned Arbitrator has held that MLA provides for levying of interest at the rate of 14% p.a. on failure of deposit of

license fee and in view of contractual stipulation directed the deposit of license fee with interest at the rate of 14% p.a. The said finding is not shown to suffer from any patent illegality.

25. As far as the payment of legal expenses is concerned, under Section 31-A of the Arbitration Act, the Arbitrator has the discretion to determine whether costs are payable by one party to another and the amounts of costs. The costs have been imposed on the Respondent as the Claimant has been partially successful. The Learned Arbitrator has further held that there were repeated delays on part of the Respondents in clearing the arbitrator's fees and directed reimbursement of the last installment which had been paid by the Claimant. I am not inclined to interfere with the discretionary power of the Learned Arbitrator of award of costs in light of the said findings.

26. In view of the above discussion, there is no reason to interfere with the impugned Award under Section 34 of the Arbitration Act. Resultantly, both Petitions fail and stand dismissed.

27. In view of above, nothing survives for consideration in pending applications, if any, and the same stand disposed of.

[Sharmila U. Deshmukh, J.]