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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 17.09.2026

CNR No.DLHC010440642026

+ ARB.P. 1664/2026

EXPRESS FOOD SERVICES

.....Petitioner

Through: Mr. Neeraj Malhotra, Sr. Adv., Mr. Akshat Bajpai, Mr. Nimish Kumar, Mr. Shobhit Trehan, Ms. Vedika Dalmia and Ms. Jayashree Mishra, Adv.

versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LIMITED

.....Respondent

Through: Mr. Tushar Mehta, SG, Mr. Saurav Agarwal, Ms. Manisha Singh, Ms. Kiran Devrani, Mr. Bhuvan Kapoor, Ms. Raadhika Chawla, Ms. Anadi Mishra, Mr. Kanav Khatana, Mr. Ishan Aggarwal, Mr. Avinash Shukla and Ms. Ojeswite Singh, Adv. for IRCTC.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 ("A&C Act") seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The petitioner (a partnership firm with over 20 years' experience in railway catering) was awarded 11 cluster catering tenders by the respondent following competitive bidding. As part of the technical eligibility criteria,



the petitioner submitted ISO 22000:2018 certificates for two units – Itarsi and Agra Cantt. railway stations, procured through an intermediary, which in turn engaged the certifying body, Otabu on behalf of the petitioner.

3. It is the petitioner's case that a representation was made to it by the intermediary engaged by it to the effect that the certificates, once issued, would remain valid for three years without further action needed from the petitioner. However, the certificates were later cancelled for non-surveillance.

4. Consequently, IRCTC issued a Show Cause Notice (SCN) dated 27.04.2026 alleging that the certificates stood cancelled and further, proposed termination of all 11 tenders, forfeiture of licensee fee and security deposit, along with a three year debarment. The petitioner replied to the SCN on 10.05.2026.

5. In the above backdrop, disputes having arisen between the parties, the petitioner herein filed a Section 9 petition viz. O.M.P.(I) (COMM.) 353/2026 and also issued a notice invoking arbitration on 29.08.2026.

6. The Master License Agreement included in the tender document i.e. the governing contract between the parties herein, contains an arbitration clause, 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.
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7. Issue notice.

8. Learned counsel, as aforesaid, accepts notice on behalf of the respondent.

9. The existence of the arbitration agreement is not disputed. However, it is noticed that the arbitration agreement contemplates that the sole arbitrator be appointed from IRCTC's list of empanelled arbitrators.

10. It is the case of the petitioner that the appointment mechanism contemplated in the arbitration agreement is akin to a unilateral appointment which is impermissible in terms of the judgment of the Supreme Court in **Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)**, (2025) 4 SCC 641. It has been observed therein as under:

"132. In Voestalpine [Voestalpine Schienen GmbH v. DMRC Ltd., (2017) 4 SCC 665 : (2017) 2 SCC (Civ) 607] and CORE [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712] , one of the parties curated a panel of arbitrators and mandated the other party to select their arbitrator from the panel. Since the curation of the list is exclusively undertaken by one party, the other party is



effectively excluded from the process of curating the panel from which exclusively, the appointment of an arbitrator is to be made. The other party has to mandatorily select its arbitrator from a curated panel, restricting their freedom to appoint an arbitrator of their choice. This is against the principle of equal treatment contained under Section 18. In this situation, there is no effective counterbalance because both parties do not participate equally in the process of appointing arbitrators. The party curating the panel can restrict the choice of the party only to a person who is on the panel selected by the other party and to no other person.

133. Many PSUs are regularly involved in arbitration disputes and constantly need the services of arbitrators. Such institutions often maintain a pool of potential arbitrators with the sole object of having a ready pool of qualified professionals who have committed their time and consented to act as arbitrators for fixed fees. The Arbitration Act does not prohibit parties to an arbitration agreement from maintaining a curated panel of potential arbitrators. However, the problem arises when the PSUs make it mandatory for other parties to select their nominees from the curated panel of arbitrators. When a PSU exercises its discretion to curate a panel, the very factor that the PSU is choosing only a certain number of persons as potential arbitrators and not others will raise a reasonable doubt in the mind of a fair-minded person. The PSUs may conceivably have nominated a person on the panel of potential arbitrators because they have a certain predisposition in favour of the former. This doubt is reinforced when the other party is given no choice but to select its arbitrator from the curated panel.

134. In *CORE [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712]*, the three-member tribunal was sought to be constituted in the following manner : (i) the Railways would suggest at least four names of retired railway officers; (ii) the contractor would select two names out of the panel for appointment as their arbitrator; (iii) The General Manager (of the Railways) would thereafter choose at least one person out of the two to be appointed as the contractor's arbitrator; and (iv) The General Manager would proceed to appoint the balance arbitrators from the panel or outside the panel and also indicate the presiding arbitrator.

135. Such an arbitrator-appointment clause is likely to give rise to justifiable doubts as to the independence and impartiality of arbitrators for two reasons : (i) the contractor is restricted to choosing its arbitrator from the panel of four arbitrators nominated by the party who is a disputant; and (ii) the contractor's choice is further constrained because it



is made subject to the decision of the General Manager who will choose one among the two persons suggested by the party. Since the contractor has to select its arbitrator from a curated panel, the arbitration clause does not allow the contractor equal participation in the appointment of their arbitrator. Moreover, the clause allows the General Manager to appoint the balance arbitrators from either the panel or outside the panel. Thus, the process of appointing the arbitrators is unequal because the General Manager can go beyond the panel of four potential arbitrators, while the contractor is bound by the names enlisted in the panel.”

11. Recently, a Coordinate Bench of this Court in **Kalpataru Projects International Ltd. v. Northern Railway**, 2026 SCC OnLine Del 110, while relying upon the aforesaid judgment of the Supreme Court, has, in a similar factual conspectus appointed a sole arbitrator, while, *inter alia*, observing as under:

“12. The position of law is, thus, clear that even in cases, where there is a three member panel, an Arbitration Clause mandating the other party to select its Arbitrator from a curated panel of potential Arbitrators, is against the Principle of Equal Treatment of Parties. Accordingly, it is evident that the Arbitration Clause detailing the procedure for appointment of the Arbitral Tribunal, i.e., Clause 24.1 in the present case cannot be sustained, and would be invalid.”

12. As such, it is requested that an independent Sole Arbitrator be appointed by this Court to adjudicate the disputes between the parties.

13. Learned Solicitor General, while vehemently disputing the contentions raised by the petitioner on the merits of the matter, fairly submits that an independent Sole Arbitrator be appointed by this Court to adjudicate the disputes between the parties.

14. Accordingly, Mr. Justice (Retd.) J. R. Midha, former Judge, Delhi High Court (Mobile No. +91 9717495003) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The learned Sole Arbitrator may proceed with the arbitration



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proceedings subject to furnishing to the parties requisite disclosures as required under section 12 of the A&C Act, and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this Court.

16. It is agreed between the parties that the arbitration shall take place under the aegis of and as per the rules of Delhi International Arbitration Centre (DIAC).

17. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on merits, in accordance with law.

18. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the contentions of the parties.

19. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

SEPTEMBER 17, 2026/cl