

OD-3

ORDER SHEET

AP/487/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

M/S. SINGH CATERERS AND VENDORS
VS
INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD. ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 1st August, 2023.

Appearance:

Mr. Priyankar Saha, Adv.
Ms. Srijani Mukherjee, Adv.
Mr. L.R. Mondal, Adv.
...for the petitioner

Mr. Akash Dutta, Adv.
...for the respondent IRCTC

The Court: The dispute arises out of a letter dated 31st January, 2014 by which the respondent Railways awarded a contract for pantry car catering services on a particular train to the petitioner. The contract, which was initially for five years, was renewed on 30th January, 2019 with effect from 21st February, 2019 to 20th February, 2024. The renewal was followed by a Rider Agreement dated 23rd June, 2022 only for the purpose of allowing IRCTC to come in in place of the Railways. Clause 2 of the Rider Agreement provides that the terms and conditions of the Rider Agreement shall prevail over the Master Licence Agreement dated 31st July, 2014 (according to counsel this should be 31st January, 2014 and not 31st July, 2014).

The Master Licence Agreement is the letter which has been referred to for awarding the contract in the first part of this order.

Clause 8.4 of the Master Licence Agreement/letter dated 31st January, 2014 significantly provides for increase/decrease of the licence fee payable by the petitioner to the Railways on a pro rata basis upon revision of framed schedules and increase/decrease of the frequency of train services.

The dispute arises out of a letter of demand made by the Railways on the petitioner on 4th January, 2023 in alleged disregard of the fall in the number of trains during the COVID pandemic. The respondent raised a claim of Rs.1.7 crores whereas the petitioner stated in its letter of 9th February, 2023 that there was actually a 90% drop in sales following the reduction in the number of trains during the pandemic. The petitioner accordingly requested for revision in the licence fee in accordance with Clause 8.4 of the Master Licence Agreement.

The petitioner also invoked the arbitration clause by way of a notice dated 23rd March, 2023 for appointment of Arbitrator. The arbitration clause is contained in Clause 20.2 of the Master Licence Agreement. The respondent did not reply to the notice of invocation of the arbitration clause.

The respondent is represented and learned counsel places a letter of 21st April, 2022 by which, according to counsel, the respondent had indicated the reduced licence fee to the petitioner.

Since this letter was issued much before the disputed letter of 4th January, 2023 whereby the respondent raised a demand of Rs.1.7 crores on the petitioner, the earlier letter becomes of little relevance.

There is obviously a dispute between the parties since the petitioner claims the benefit of Clause 8.4 of the Agreement for reduction of the rate of licence fee chargeable on the petitioner whereas the respondent says otherwise.

The letter of demand of the respondent would show the dispute raised on behalf of the respondent.

Given the facts recorded, the disputes between the parties are directly relatable to the Master Licence Agreement of 31st January, 2014. The letters exchanged between the parties are till April, 2023. An Arbitrator is hence to be appointed to resolve these disputes.

AP/487/2023 is accordingly allowed and disposed of by appointing Mr. Narayan Chandra Sil, former Judge of this Court (Mob : 9830547037) to act as the learned Arbitrator to resolve the disputes and differences between the parties subject to the Arbitrator communicating his/her consent in the prescribed format under the 1996 Act read with the Schedules to the learned Registrar, Original Side within three weeks from date.

The advocate-on-record of the petitioner shall communicate this order on the learned Arbitrator by 3rd August, 2023 with the relevant details of the contact person.

(MOUSHUMI BHATTACHARYA, J.)