

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

**Present :-**

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA.**

AP/509/2023

ARAHA HOSPITALITY PVT. LTD.

Vs

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LTD.

For the Petitioner : Mr. Priyankar Saha, Adv.  
Ms. Srijani Mukherjee, Adv.  
Mr. L.R. Mondal, Adv.

For the Respondents : Mr. Sarosij Dasgupta, Adv.  
Mr. Sabyasachi De, Adv.  
Ms. Afreen Begum, Adv.

Last Heard on : 03.08.2023

Delivered on : 04.08.2023

**Moushumi Bhattacharya, J.**

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

2. The petitioner relies on an Agreement between the petitioner and the respondent dated 19<sup>th</sup> May, 2022 relating to a licensee operation for a food plaza. The Agreement was with regard to an auction for setting up, operation and management of a food plaza at railway stations. This Agreement contains an arbitration clause at Clause 9. The petitioner, through learned counsel, submits that the petitioner subsequently became aggrieved by the respondent awarding the work of management of catering services of a Jan Ahaar Scheme to one Harish Kumar Arora who thereafter started operations on and from 11<sup>th</sup> October, 2022. The petitioner's grievance is outlined in a letter dated 23<sup>rd</sup> November, 2022 written to the respondent. The petitioner also moved an application before the learned City Civil Court in 2022 (Misc. Case No. 7417/2022) wherein the petitioner obtained an order dated 29<sup>th</sup> November, 2022 restraining the awardee of the Jan Ahaar Scheme from selling food items beyond the tender conditions of Jan Ahaar and also not to give effect to the letter dated 14<sup>th</sup> October, 2022 by which the respondent sanctioned the Scheme to the awardee, namely, Harish Kumar Arora. The petitioner

thereafter sent a notice under Section 21 of the 1996 Act to the respondent on 23<sup>rd</sup> March, 2023 invoking the arbitration clause. Learned counsel appearing for the petitioner submits that the dispute is with regard to the awardee of the Jan Ahaar Scheme hampering the petitioner's business and causing monetary loss to the petitioner.

3. The respondent is represented and learned counsel submits that the Jan Ahaar Scheme was a policy decision of the respondent and further that the present dispute is not an arbitrable dispute.

4. Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 refers to parties, an agreement and appointment of an arbitrator. The reference to "parties" is an underlying theme of Section 11. The scheme of Section 11 requires an agreement between the parties which has led to a dispute including a disagreement of the parties to the choice of arbitrator within the stipulated time frame and also refusal to act in accordance with the appointment procedure agreed upon by the parties.

5. Section 2(1)(h) of the Act defines a "party" as a party to an arbitration agreement. Read together, it is clear that the Act contemplates the parties to an arbitration agreement coming to the High Court or the Supreme Court under Section 11 where there is a dispute between the parties relatable to the Agreement.

6. In the present case, the arbitration clause of the food plaza agreement between the petitioner and the respondent states that the disputes and differences arising between the parties must be “with reference to the contract”. Hence, any dispute which the petitioner may have with IRCTC on the terms and conditions of the contract would be a fit case where the Court could have gone into the arbitrability of the dispute. The petitioner has however come up with a case against the respondent but not in terms of the contract with the petitioner but with a third party in relation to the Jan Ahaar Scheme. That third party is not a party to the arbitration agreement and is hence not before the Court.

7. Therefore, even if the Court accepts the reasonableness or logic of the petitioner’s grievance against the respondent, the Court can only act on an application under Section 11(6) of the Act if the dispute relates to the arbitration agreement where the petitioner and the respondent are parties.

8. Since this is admittedly not the case and the dispute involves a third party, the Court is unable to allow the application and appoint an Arbitrator.

9. AP/509/2023 is accordingly dismissed. There shall be no order as to costs.

10. The Court recognises that the petitioner may not have a remedy under Section 11 of the 1996 Act, needless to say that it will not preclude the petitioner from seeking appropriate redress in accordance with law.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

**(Moushumi Bhattacharya, J.)**