



\$~3

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 225/2024**

AMBUJ HOTEL AND REAL ESTATE PVT LTD..... Petitioner

Through: Mr. Rajshekhar Rao Sr. Adv. with
Mr. S.S. Sisodia, Mr. Saurav Kr.
Singh, Ms. Muskan Rawlley & Mr.
Moksh Kataria, Advs. (M:
7903611886)

versus

MINISTRY OF RAILWAYS AND ANR Respondent

Through: Mr. Vineet Dhanda, CGSC for R-1.
(M: (M:9811013810)
Mr. Harshit Agarwal with Mr.
Aasheesh Gupta, Mr. Kamal Kumar,
Mr. Gyaltsen Barfungpa and Ms.
Charu Bansal, Advs. for R-2 (M:
9811026362)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **16.04.2024**

1. This hearing has been done through hybrid mode.
2. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, '*the Act*') filed by the Petitioner-Ambuj Hotel and Real Estate Pvt. Ltd. seeking appointment of an independent Arbitrator in terms of Clause 20.2 of the Master license Agreement (hereinafter, '*MLA*') dated 1st August, 2014 and Clause 8.9 of the Tripartite Agreement dated 6th September, 2017.
3. The case of the Petitioner is that it had entered into the MLA dated 1st August, 2014 for providing onboard catering services on train DHN-ALLP EXPRESS for a period of 5 years, with effect 21st February, 2014.



Thereafter, the zonal railway delegated its power to Indian Railway Catering and Tourism Corporation (hereinafter, 'IRCTC') - Respondent no. 2 to manage and supervise the services rendered by the licensee Petitioner and to this effect, a Tripartite Agreement got executed amongst Chief Commercial Manager Northern Railway.

4. The case of the Petitioner is that there was a further renewal clause, dated 12th December, 2019, and in accordance with the MLA, the License Fees was revised with an additional 10 percent amounting to Rs. 18,20,61,695/-. It is stated that the license terms were revised again after the renewal retroactively

5. Subsequently, disputes arose between the parties due to certain revision in the license fee. The Petitioner is stated to have issued a notice invoking arbitration under Section 21 of the Act on 19th September, 2023.

6. On 21st February, 2024, notice was issued. Mr. Harshit Agarwal, Id. Counsel appears for the IRCTC and Mr. Vineet Dhanda, Id. Counsel along with Mr. Kushagra Kumar, Id. Counsel appears for the Union of India.

7. Id. Counsel for the IRCTC submits that invocation of arbitration was only in respect of IRCTC and not the Union of India. Secondly, he points out that Courts in Patna have exclusive jurisdiction in terms of the jurisdiction clause specified in the MLA.

8. On the other hand, Mr. Rao, Id. Counsel for the Petitioner points out that the IRCTC is located in Delhi and the Tripartite Agreement had substituted the MLA. There is no exclusive jurisdiction of any court fixed in the Tripartite Agreement.

9. The Court has considered the matter. The clauses in the two agreements are as under:



Clause in the MLA is as under:

“ARTICLE 20 DISPUTE RESOLUTION

20.1 In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement between the parties ("Disputes"), the parties shall firstly attempt to amicably resolve such Disputes through the highest level of negotiations and discussions.

20.2 In the event that Disputes between the parties subsist beyond 30 days of negotiations between the Parties, then the Dispute shall be settled as per the provisions of Arbitration and Conciliation Act 1996. The dispute shall be referred to:

(a) Sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager of the Zonal Railway awarding the License. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference.

(b) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitrator at all.

(d) The arbitrator may from time to time with the consent of all the parties to the contract enlarge the time for making the award.

(e) Upon every and any such reference the assessment



of the cost incidental to the reference and award respectively shall be in the discretion of the arbitrator.

(f) Subject as aforesaid, the Arbitration and Conciliation Act, 1996 and the rules thereunder and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.

(g) The venue of the arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine.

(h) In this clause the authority to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.

20.3 The award passed shall be final and binding and both Parties waive the right to appeal or contest the arbitral award.

*20.4 It is further clarified that during the resolution of the Disputes, the Licensee shall be obligated *** the continued performance of its obligations under the Agreement until the resolution of the Disputes.*

xxx

xxx

xxx

21.4 Jurisdiction

This Agreement will be governed by and construed in accordance with the laws of the Republic of India and the Courts at [Patna] (Zonal Railway HQ) shall have exclusive jurisdiction in all matters relating to this Agreement.”

Clause in the Tripartite Agreement is as under:

“8.9 In case of any dispute the matter shall be referred for Arbitration to a Sole Arbitrator to be appointed as per Arbitration & Conciliation Act, 1966 as amended from time to time.

8.10 At the end of tenure of the license the licensee



shall hand over the peaceful possession of the pantry car/kitchen unit to CMD/IRCTC.”

10. After having perused the above clauses and the fact that the IRCTC is itself based in Delhi as set out in the agreement itself, this Court would have the jurisdiction to appoint the Arbitrator under Section 11(6) of the Act.

11. In the earlier matter **ARB.P. 187/2024** this Court has already appointed Justice Dinesh Kumar Singh (Retd.) as the sole Arbitrator to adjudicate the disputes between parties. In view of the fact that parties are the same and the disputes broadly relates to the same issue, following the broad principle laid down in ***Gammon India Ltd. & Anr. v. National Highways Authority Of India (2020:DHC:2144)***, the same Id. Arbitrator is appointed in this matter also for adjudication of the disputes, so as to avoid multiplicity, conflicting awards and for rationalisation of costs.

12. Accordingly, **Justice Dinesh Kumar Singh (Retd), (M: 9431015011)** is appointed as the sole arbitrator to adjudicate upon the disputes between the parties. The arbitration shall take place under the aegis of Delhi International Arbitration Centre (hereinafter, ‘DIAC’). The fee of the Id. Sole Arbitrator shall be paid in terms of the Fourth Schedule of the Act as amended by DIAC Rules, 2023.

13. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.

14. The petition is disposed of. All pending applications are disposed of.

PRATHIBA M. SINGH, J.

APRIL 16, 2024

dj/bh