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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (COMM) 245/2023

RAMEN DEKA

..... Petitioner

versus

INDIAN RAILWAYS CATERING AND
TOURISM CORPORATION LTD AND ORS

..... Respondents

+ O.M.P. (COMM) 384/2023

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LTD

versus

M/S. RAMEN DEKA

..... Respondent

+ OMP (ENF.) (COMM.) 35/2024 & EX.APPL.(OS) 220-222/2024

M/S RAMEN DEKA

..... Decree Holder

versus

IRCTC AND OTHERS

..... Judgement Debtors

Appearance:

Mr. Rakesh Dubey and Mr. Sanjeev Prakash Upadhyay, Advocates for
Ramen Deka.

Mr. Sonal K. Singh, Mr. Ratik Sharma and Mr. Parth Sindhwani,
Advocates for IRCTC.



CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
% 16.05.2024

O.M.P. (COMM) 245/2023 & O.M.P. (COMM) 384/2023

1. These are cross petitions, under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], directed against an Arbitral Award dated 20.03.2023, by which disputes between the parties, in respect of an agreement for running of a food plaza at Old Howrah Station, Kolkata, have been adjudicated.
2. One of the principal issues decided by the learned Arbitrator concerns the liability of M/s Ramen Deka [“Licensee”], to pay additional license fees for an area of approximately 35 sq. mtr., which was occupied by it in addition to the original area of approximately 290 sq. mtr. mentioned in the tender documents. The learned Arbitrator has found that the licensee was not liable to pay additional license fee and has, therefore, held that the termination of the license by the licensor - Indian Railway Catering and Tourism Corporation [“IRCTC”] was invalid.
3. IRCTC has filed OMP(COMM) 384/2023 challenging this finding. The Licensee on the other hand has filed O.M.P. (COMM) 245/2023 aggrieved by the denial of certain consequential reliefs it had claimed before the learned Arbitrator.
4. It is the case of Mr. Sonal K. Singh, learned counsel for IRCTC, that in the impugned Award, while returning this finding, no reference has been made to two communications, which record the petitioner’s agreement to pay additional licence fees. These are a communication



dated 20.06.2017, addressed by the petitioner to IRCTC, and a communication dated 30.06.2017 addressed by IRCTC to the Railway authorities, with a copy to the Licensee. Mr. Rakesh Dubey, learned counsel for the Licensee, on the other hand, submits that the Arbitral Tribunal has proceeded on a plausible reading of a contractual document including the final agreement entered into between the parties on 31.10.2019.

5. After some hearing, learned counsel on both sides, upon instructions, submit that the impugned award be set aside on the contested claims and counter-claims, and the parties be referred to arbitration afresh at the stage of final hearing, for a re-adjudication of those claims and counter-claims. Learned counsel for the parties, however, state that there are certain claims and counter-claims upon which the decision of the Arbitral Tribunal in the impugned award is accepted by both parties, and those claims and counter-claims need not be referred to arbitration afresh.

6. With the assistance of the learned counsel for the parties, the various claims and counter-claims adjudicated in the award are categorised into these two categories below:

A. UNCONTENDED CLAIMS/COUNTER-CLAIMS

Claim /Counter Claim No.	Particulars	Status
Claim No.4 [Part]	Refund of license fees and GST for the period 22.03.2020-25.08.2020 in accordance with policy decision of IRCTC for the COVID period.	The learned Arbitrator has awarded Rs.2,01,16,554/- on this account. IRCTC has accepted this part of the award, but the licensee claims GST on the said



		amount, which has not been decided by the Arbitral Tribunal.
Claim No.6	Challenge to blacklisting, by the order dated 01.04.2021.	The blacklisting decision was a consequence of the termination, by order dated 01.04.2021, which was not challenged by the Licensee. The blacklisting was for a period of one year, which has lapsed.
Claim No.7	Entitlement of the licensee to continue to operate the Food Plaza in terms of the Agreement.	This claim was not pressed by the Licensee before the Arbitral Tribunal.
Claim No.8	To set aside the tender process for allotment of the site to a new licensee.	This claim was not pressed by the Licensee during the arbitration.
Counter Claim No. 1	Claim for outstanding license fee on the original area of approximately 290 sq. mtr.	The Arbitral Tribunal awarded Rs.7,12,515/- + 18% GST, which is accepted by both parties.
Counter Claim No.3	Claim for license fee for the period of 06.01.2021-01.04.2021.	The Arbitral Tribunal awarded a sum of Rs.29,62,237/- + 18% GST, which is accepted by both the parties.
Counter Claim No.4	Penalties imposed upon the claimant for breach of agreement.	The Arbitral Tribunal awarded Rs.84,960/- in favour of IRCTC, which is accepted by both the parties.
Counter Claim No.5	Payment of energy charges on actual consumption.	The Arbitral Tribunal awarded Rs.24,49,448/- in favour of IRCTC, which is accepted by both the parties.
Counter Claim No.7	The provisional refund of	The licensee was held



	license fee on account of COVID 19.	entitled to refund of the license fee for this period, which is not challenged by IRCTC.
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B. CONTESTED CLAIMS & COUNTER-CLAIMS

Claim/Counter Claim No.	Particulars
Claim No.1	Declaration that the claimant is not liable to pay license fee for the additional space.
Claim No.2	Declaration that the claimant is not liable to pay interest on the outstanding license fee for the additional space.
Claim No.3	Declaration that the claimant is not liable to pay GST on the outstanding license fee for the additional space.
Claim No.4 [Part]	Claim for payment of GST on the refund of license fee for the period 22.03.2020-25.08.2020.
Claim No.5	Claim for interest on the refund of license fee for the period 22.03.2020-25.08.2020.
Claim No.8	Refund/restoration of security deposit.
Claim No.9	Loss of profits.
Claim No.10	Compensation for overheads.
Claim No.11	Compensation for illegal blacklisting, loss of credential and loss of good will.
Claim No.12	Claim for interest of bank loan.
Claim No.13	Claim for refund of Rs.10,00,000/- paid for additional space in the month of Dec 2017 and 18% interest on that front.
Claim No.14	Claim for damages, compensation and loss of profits.
Counter Claim No.2	Claim for outstanding license fees for the additional area of 35.04 sq. mtr.
Counter Claim No.6	Interest on delayed payment.
	Interest on any amounts awarded under the claims or counter claims
	Costs



7. With the consent of learned counsel for the parties, the impugned Award is hereby set aside, in respect of the claims and counter-claims mentioned in paragraph 6B hereinabove. Challenge to the other claims and counter claims (enumerated in paragraph 6A above) are dismissed as not pressed.

8. At the request of learned counsel for the parties, the disputes enumerated in paragraph 6B, are referred to arbitration of Hon'ble Dr. Justice S. Muralidhar, former Chief Justice, High Court of Orissa [Tel: 98727-27986]. The arbitration will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi-110503 ["DIAC"], and will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.

9. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

10. It is made clear that the reference is to be taken up at the stage of final hearing. Learned counsel for the parties may request the erstwhile learned Arbitrator to make available the record, so that it can be placed before the learned Arbitrator appointed today.

11. The petitions are disposed of in these terms.

12. The amount of Rs.90,00,000/-, deposited by IRCTC, pursuant to the order dated 13.02.2024, shall abide by the final decision of the Court in OMP (ENF.) (COMM.) 35/2024.

OMP (ENF.) (COMM.) 35/2024

1. The Licensee has filed the enforcement proceedings for enforcement of the Award dated 20.03.2023. Pursuant to an order dated 13.02.2024, IRCTC has deposited an amount of Rs.90,00,000/- into



Court.

2. By virtue of the order passed today in O.M.P. (COMM) 245/2023 & O.M.P. (COMM) 384/2023, the Award of Rs.2,01,16,554/- in favour of the licensee has attained finality, as has the Award of Rs.62,08,000/- in favour of IRCTC. It, therefore, appears that IRCTC is required to deposit a further sum of Rs.49,08,554/- towards satisfaction of the Award dated 20.03.2023 in respect of the claims and counter-claims which have attained finality.

3. At the request of Mr. Singh, time is granted to take instructions as to the period in which further deposits will be made.

4. Mr. Dubey seeks permission to withdraw the amount of Rs.90,00,000/- deposited by IRCTC.

5. List on 28.05.2024. Mr. Singh may take instructions on both these aspects in the meantime.

PRATEEK JALAN, J

MAY 16, 2024

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