



2024:DHC:5623



\$~48

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

+ **ARB.P. 1338/2023**

AMBUJ HOTEL AND REAL ESTATE PVT LTDPetitioner

Through: Mr. S.S. Sisodia, Mr. Saurav
Kr. Singh, Mr. Moksh Kataria and Ms.
Muskan, Advs.

versus

MINISTRY OF RAILWAYS AND ANR.Respondents

Through: Mr. Mukul Singh, CGSC with
Ms. Ira Singh, Adv. for R-1
Ms. Rashmi Malhotra, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

%

30.07.2024

1. This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("1996 Act") seeking reference of the dispute between the petitioner and the respondent to arbitration.

2. The dispute pertains to catering services provided by the petitioner to Train No. 12723-12724 (Telangana Express) which runs between Hyderabad and New Delhi.

3. The basic grievance of the petitioner appears to be that, after the COVID-19 pandemic, there was a unilateral change in the time of the Telangana Express, which resulted in the petitioner not being able to serve the number of meals which it was earlier serving and consequently suffering loss of revenue.

Signature Not Verified

Digitally Signed By: ARB.P. 1338/2023
KUMAR
Signing Date: 31.07.2024
16:06:33

Page 1 of 6

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 31.07.2024
16:05:59



2024:DHC:5623



4. Paras 13 and 14 of the present petition encapsulate this grievance and read thus:

“13. That a list of catering services timings for and list of meals clarifying that which meal to be served in which time duration was also issued by the Respondents which makes it clear that the Petitioner is not able to serve two meals on the said Train Journey to and fro. That a copy of the catering service timings dated 02.08.2022 is annexed herewith and marked as DOCUMENT- P-6. For a bare perusal a chart of the revised catering service timings is presented below:

Sr.	Service	Timing
1.	Morning Tea	06:00-08:00 hrs
2.	Breakfast	08:00 to 09:30 hrs
3.	Lunch	13:00 to 15:00 hrs
4.	Evening Tea	16:30 to 19:30 hrs
5.	Dinner	19:30 to 21:30 hrs

14. That the Petitioner after 2021 in the train No. 12724 from New Delhi to Hyderabad is not able to serve one meal i.e., Evening Tea to the passengers on board on the second day of journey as the train reaches at 03:55 pm Whereas the timing for the evening Tea starts from 04:30pm, However before 2021 the Petitioner was able to serve the same as the arrival of said train was at 07:15 pm. And in the train No. 12723 from Hyderabad to New Delhi is not able to serve one meal i.e., Breakfast to the passengers on board on the second day of journey as the train reaches at 07:40am. Whereas the timing for the breakfast starts from 08:00am, However before 2021 the Petitioner was able to serve the same as the arrival of said train was at 09:40 am.

5. Respondent 2, in its reply, raised an issue of territorial jurisdiction. It was sought to be contended that there were two agreements which have to be taken into consideration, one being a Master License Agreement (MLA) dated 23 August 2014 and the second a Tripartite Agreement (TPA) dated 22 August 2017.

6. The MLA has been executed between the petitioner and the South Central Railways whereas the TPA has been executed among

Signature Not Verified

Digitally Signed By: AIRB.P. 1338/2023
KUMAR
Signing Date: 31.07.2024
16:06:33

Page 2 of 6

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 31.07.2024
16:05:59



2024:DHC:5623



the South Central Railways, the petitioner and Indian Railways Catering and Tourism Corporation (IRCTC). The respondent, in its reply sought to contend that the present dispute relates to the MLA, in which there is a clause conferring exclusive jurisdiction on courts in Andhra Pradesh.

7. Though the MLA and the TPA both have clauses envisaging resolution of dispute by arbitration, the TPA does not contain any exclusive jurisdiction clause. The respondent's contention is that, as the dispute pertained to the MLA, this Court would not have jurisdiction in the matter.

8. I have heard Mr. Sisodia, learned Counsel for the petitioner, Mr. Mukul Singh, learned CGSC for the respondent and Ms. Rashmi Malhotra, learned Counsel for Respondent 2.

9. Mr. Sisodia has taken me through the covenants of the TPA. He submits that the dispute in this case is fundamentally tripartite, among the petitioner, the South Central Railway and the IRCTC. The TPA was specifically executed with respect to Train No. 12723-12724 (the Telangana Express), with which alone the dispute is concerned.

10. The dispute that the petitioner seeks to raise, he submits, falls within the four corners of the TPA.

11. Mr. Sisodia has also submitted that there are at least four earlier orders passed by this Court in which similar disputes, with respect to different trains, have been referred to arbitration of Hon'ble Mr.

Signature Not Verified

Digitally Signed By: AAR B.P. 1338/2023
KUMAR
Signing Date: 31.07.2024
16:06:33

Page 3 of 6

Signature Not Verified

Digitally Signed
By: CHANDRASEKHARAN
HARI SHANKAR
Signing Date: 31.07.2024
16:05:59



2024:DHC:5623



Justice Dinesh Kumar Singh, a retired Judge of the High Court of Patna, and that the learned arbitrator has already entered on the reference on the said cases. He submits that, even in those cases, this Court had taken into consideration the covenants of the MLA and the TPA.

12. Though it is a fact that there four earlier orders as Mr. Sisodia correctly points out, a reading of the said orders did not indicate that this Court had, while referring dispute to arbitration, considered the contention of the respondent that the dispute pertained to the MLA and not the TPA. As such, I have heard Mr. Sisodia even on this aspect.

13. Insofar as the jurisdiction of the Court under Section 11(6) is concerned, the Supreme Court, in its recent decision in ***SBI General Insurance Co Ltd v Krish Spinning¹***, has advocated circumspection on the part of the Court, which should restrict its examination to the aspect of whether an arbitration agreement exists or does not exist between the parties. The Supreme Court has also held, in no uncertain terms, that all other issues ideally should be left for the decision of the learned Arbitral Tribunal, applying the *kompetenz-kompetenz* principle.

14. It cannot be said, from the material on record, and after hearing learned counsel, that the present dispute falls within the scope of the MLA and is not relatable to the TPA. One of the factors that may be

¹ 2024 SCC Online SC 1754



2024:DHC:5623



relevant in this consideration is the fact that the TPA is specifically with respect to the Telangana Express with which the dispute is concerned whereas the MLA is not train specific.

15. In any event, this is a matter which, in the facts of the present case, ought in my opinion to be relegated for the decision by the learned Arbitral Tribunal.

16. Similar disputes are already pending before Hon'ble Mr. Justice Dinesh Kumar Singh (Retd.).

17. As such, following the earlier orders passed in the said cases, this petition is also disposed of by referring the dispute between the parties to Hon'ble Mr. Justice Dinesh Kumar Singh (Retd) (Mob: 9431015011).

18. It is open to the learned arbitrator to consolidate this proceeding with the proceeding already pending before him.

19. As in the earlier case, the present proceeding would also be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations.

20. The learned arbitrator would be entitled to fees as per the schedule of fees maintained by the DIAC. The learned Arbitrator is requested to submit the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on the reference.

Signature Not Verified

Digitally Signed By: AIRB.P. 1338/2023
KUMAR
Signing Date: 31.07.2024
16:06:33

Page 5 of 6

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 31.07.2024
16:05:59



2024:DHC:5623



21. All issues of facts and law, including the issue as to whether the present dispute falls within the four corners of the MLA or the TPA are left open for arguments and consideration by the learned Arbitrator.

22. This Court does not express any final view thereon.

23. The petition stands disposed of in the aforesaid terms with no order as to costs.

C. HARI SHANKAR, J

JULY 30, 2024

dsn

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: AAR.B.P. 1338/2023
KUMAR
Signing Date: 31.07.2024
16:06:33

Page 6 of 6

Signature Not Verified

Digitally Signed
By: CHANDRASHEKHARAN
HARI SHANKAR
Signing Date: 31.07.2024
16:05:59