

OCD 4

ORDER SHEET
AP-COM/112/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

M/S FLEMINGO DUTY FREE SHOP PRIVATE LIMITED
VS
AIRPORTS AUTHORITY OF INDIA

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 19th February, 2025.

Appearance:
Mr. Reetobroto Mitra, Sr. Adv.
Ms. Nasrin Sultana, Adv.
Mr. Rahul Singh, Adv.
...for the petitioner

Mr. Suhrid Sur, Adv.
...for the respondent

The Court: This is an application for appointment of a learned Arbitrator in accordance with Clause 22.2.1 of the Concession Agreement dated July 18, 2016. The disputes and differences cropped up between the parties with regard to the Electronic Point of Sale (EPOS) charges. The petitioner contends that earlier, the EPOS system would be operated by the petitioner. Thereafter, the respondent outsourced the said system to a third party and claimed charges for the same from the petitioner. The records reveal that several meetings were held between the parties over such dispute. These disputes were resolved through mediation in respect of other airports. With regard to Netaji Subhas Chandra

Bose International Airport, despite several meetings, no consensus could be arrived at between the parties.

Under such circumstances, this Court is of the view that the disputes cannot, at this stage, be resolved amicably and any further direction upon the parties to proceed with an amicable settlement, will be an empty formality. The notice invoking arbitration was issued. In any event, during the proceedings, if the parties can resolve the disputes, they are welcome to do so. The petitioner submits that at this stage, the only other remedy available to the parties is to get the disputes resolved by arbitration.

As per the mechanism provided in the agreement, the Sole Arbitrator is to be appointed by the Chairman of the Authority. This, in my view, is not permissible under the present law. Reference is made ***Central Organization for Railway Electrification vs. ECI SPIC SMO MCML (JV) A Joint Venture Company*** reported in 2024 ***SCC OnLine SC 3219*** and ***Perkins Eastman Architects DPC and Another vs. HSCC (India) Ltd.*** reported in ***2019 SCC OnLine SC 1517***.

Under such circumstances, the petitioner has moved this application for appointment of an Arbitrator by Court.

Mr. Sur, learned advocate for the respondent submits that the clause provides that the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi or such other rules as may be mutually agreed by the parties, shall be applicable to the proceeding and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The arbitration shall be at the location of the Airport. In this case, it is Kolkata. According to Mr. Sur, the

matter should have been referred to the International Centre for Alternative Dispute Resolution, New Delhi.

In my view, the clause provides for appointment of an Arbitrator by the Chairman of the Authority. This is no longer permissible in law. When such mechanism fails, the only other remedy for the petitioner is to approach this Court under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator. According to the said clause, the parties are at liberty to either follow the procedural rules of the International Centre for Alternative Dispute Resolution or any other rules that they may mutually agree. Rules 3 to 5 of the International Centre for Alternative Dispute Resolutions Rules, which deal with the request for arbitration, number of Arbitrators and appointment of Arbitrators, will not be applicable. The agreement provides that the reference shall be to a Sole Arbitrator to be appointed by the Chairman of the Authority.

Thus, in my opinion, after the appointment, parties are at liberty to either follow the procedural rules of the International Centre for Alternative Dispute Resolution or the rules applicable under the provisions of the Arbitration and Conciliation Act, 1996.

Accordingly, the Court appoints Mr. Suman Dutt, learned Senior Advocate (Mob. No.9830403181), as the Arbitrator, to arbitrate the dispute. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

The learned Arbitrator shall fix his own remuneration as per the Schedule of the Act.

AP-COM/112/2025 is, accordingly, disposed of.

All observations made by this Court while disposing of the application for injunction were tentative and the learned Arbitrator shall proceed on the merits, independently and without being influenced any of those observations.

(SHAMPA SARKAR, J.)