

OCD 13

ORDER SHEET
AP-COM/268/2025
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

M/S DOON'S CATERERS
VS
M/S INDIAN RAILWAY CATERING
AND TOURISM CORPORATION LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 8th April, 2025.

Appearance:
Ms. Kishwar Rahman, Adv.
Mr. Prateek Kumar, Adv.
Ms. Anugraha Sundas, Adv.
...for the petitioner

Mr. Sarosij Dasgupta, Adv.
Mr. Sabyasachi De, Adv.
Ms. Afreen Begum, Adv.
...for the respondent

The Court:

1. This is an application for appointment of a learned Arbitrator to arbitrate upon the disputes between the parties.
2. The petitioner is a service provider who entered into a contract with the respondent, Indian Railway Catering and Tourism Corporation Limited (in short 'IRCTC'). In terms of the said agreement, the petitioner was required to provide meals, logistic support and transportation. According to the petitioner, the contract had provided a fixed menu.

Thereafter, the Government of India, Ministry of Railways, by a notification dated November 15, 2022 permitted the IRCTC to have a flexibility and customize the menu by including regional cuisines/preferences, seasonal delicacies, festival food, baby food, diabetic food, health food options. Thus, IRCTC in turn, prepared an additional menu and forwarded the same to all the General Manager of all railway zones. Accordingly, the petitioner, as the service provider, was required to provide the additional menu.

3. The petitioner submits that the menu was supplied as per the direction of IRCTC and bills were raised. The bills were raised from December 2023 till September, 2024, on a monthly basis. Instruction to provide the additional menu was given to the petitioner. The bills were raised as the additional/revised menu was supplied by the petitioner as the service provider of IRCTC. The petitioner contends that the additional costs incurred for such menu which was not covered by the contract, should be paid. The petitioner submits that as the payment was not made, disputes arose. The petitioner invoked arbitration, by a notice dated December 24, 2024. The amounts still remain unpaid. Accordingly, the petitioner prays for appointment of a learned Arbitrator.
4. Mr. Sarosij Dasgupta, learned advocate for IRCTC submits that the revised menu does not form part of the original contract. The arbitration clause would not govern the dispute arising out of the revised menu.

5. It is next contended that the petitioner cannot challenge the policy of the Government to permit IRCTC to customize the menu.
6. Heard the parties.
7. The referral court is required to ascertain a, prima facie, existence of an arbitration clause. Clause 8 of the notice inviting E-Tender provides as follows:

“This Agreement shall in all respects be governed by and interpreted according to the laws of India. In case of any dispute it shall be compulsory to first submit the same to the Arbitration of a Sole arbitrator who shall be an officer of IRCTC or any other person to be appointed by Group General Manager/Kolkata, after a request is made in writing by the Service provider or IRCTC. The decision of the Arbitrator shall be final and binding on both the Parties. The language of Arbitration shall be English and venue Kolkata and jurisdiction of the Courts of Kolkata only.”

8. According to the said clause, all disputes shall be compulsorily referred to a Sole Arbitrator. The venue of arbitration shall be Kolkata. The clause provides that the Group General Manager, Kolkata, upon request of the service provider or IRCTC shall appoint the Sole Arbitrator. According to the present position of law, the said mechanism for appointment of an Arbitrator is contrary to Section 12(5) read with the Fifth and the Seventh Schedule of the Arbitration and Conciliation Act, 1996. Under such circumstances, as unilateral appointment of an

Arbitrator is prohibited by law, the petitioner has rightly approached this Court for appointment of a sole arbitrator.

9. The contention of Mr. Dasgupta that the subsequent menu which was revised/updated and modified by IRCTC on the basis of a policy of the Government, is not a part of the original contract, and does not contain an arbitration clause, is not prima facie acceptable. Under the Head “Specification” in the NIT, Clause (j) provides that the supply schedule, i.e., the menu was subject to change at the sole discretion of IRCTC/Railways and IRCTC’s decision would be binding. It is not in dispute that IRCTC had revised the menu upon the flexibility granted by the Ministry of Railways and had asked all the General Managers of the zones for implementation of such modified menu. The petitioner, as the service provider, was also required to implement the said menu. These aspects, prima facie, leads the court to hold that subsequent revision of the menu is covered by the original contract. However, the issue of arbitrability is kept open, for the learned arbitrator to adjudicate.
10. With regard to the apprehension of Mr. Dasgupta that the petitioner would challenge the policy of the Ministry of Railways, this Court finds that the petitioner claims money in lieu of services provided on the basis of the additional menu. Thus, this apprehension is also unfounded.
11. Under such circumstances, the application is allowed. The Court appoints Mr. Probal Kumar Mukherjee, learned Senior Advocate, Bar Association, as the learned Arbitrator, to arbitrate upon the dispute between the parties. 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.

12. The objections which are available to the respondent shall be raised before the learned Arbitrator.

13. AP-COM/268/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)