OD –11

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL DIVISION
ORIGINAL SIDE

AP/169/2025
CRESSANDA RAILWAY SOLUTIONS LIMITED (FORMERLY KNOWN AS CRESSANDA SOLUTIONS LIMITED)
VS
EASTERN RAILWAY AND ANR

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 18th September, 2025.

Appearance:
Mr. Biswaroop Bhattacharya, Adv.
Mr. Saptarshi Roy, Adv.
Mr. Debrup Bhattacharjee, Adv.
Ms. Kakali Das Chakraborty, Adv.
...for the petitioner
Mr. Brajesh Jha, Adv.
Mr. Rajib Kumar Acharyya, Adv.
...for the respondents

The Court: The Eastern Railways raised a claim of Rs. 9,69,90,228/- against the petitioner towards outstanding license fee. The petitioner has filed a writ petition before the High Court. The Railway Authorities claimed payment of liquidated damage charges. According to the Railway Authorities the said claim was in accordance with the terms of the agreement. The writ petition was disposed of on the ground that, while exercising power under Article 226 of the Constitution of India, the validity of the decision to impose liquidated damages, could not be decided. The parties were directed to avail of the alternative remedy in accordance with law. Admittedly, the agreement contains an arbitration clause. Yet, the Writ Court directed the respondent to consider the representation of the petitioner. The representation was considered and the prayer of the petitioner was rejected by the Principal Chief Commercial Manager sometime in August, 2025.

According to the respondent, the petitioner was liable to pay the license fee in terms of the agreement. The extension of time to pay the license fee was not provided in the agreement. Liquidated damages could be imposed in terms of clause 2.2.5 of the agreement. The concept of waiver of liquidated damages was alien to the agreement. In view of the repeated default in payment, the request for waiver and the modification of the imposition of liquidated damages was not accepted. By a notice dated September 3, 2025, a demand was made for payment of Rs. 9,69,90,228/-. The details of the calculation has been provided to the petitioner. The petitioner was aggrieved and apprehensive by such communication, which was treated as the seven days' prior notice for payment and a final order to regularize the contractual obligation. The petitioner filed this application for interim protection. A notice was issued invoking the arbitration clause. However, it is contended that said notice has been issued to wrong person.

Mr. Jha, learned advocate for the respondent submits that the petitioner had committed repeated default. The payment of license fee has been due since 2024. The petitioner's claim of more than Rs. 4 crores by the respondent is unjustified and incorrect. Under such circumstances, seven days' notice was issued on September 3, 2025 calling upon the petitioner to pay the dues. The said notice clearly provides that if the final amount was not paid within seven days from receipt thereof, the Eastern Railway shall be constrained to take such action which include termination of the contract with immediate effect, forfeiture of the security deposit, and recovery of further dues as per law.

He submits that no order should be passed in favour of the petitioner. Immediately upon receipt of the seven days notice, the petitioner filed this application under Section 9 of the Arbitration and Conciliation Act, 1996 for interim reliefs. An order of injunction on the respondent is prayed for, restraining termination of the contract.

It is informed that during pendency of this application, a notice was issued on September 17, 2025 by the Chief Commercial Manager/FM, by which the contract was terminated. The petitioner is aggrieved by such termination and prays for necessary orders.

This Court has considered the balance of convenience and inconvenience. The termination of the contract during pendency of this application was a bit unjust.

The respondents were aware that this matter would be listed before this Court. The petitioner had entered into an agreement with the Railways for providing various services, including on-board catering services. Sudden termination of the contract during the pendency of the application before this Court has caused irreparable loss and injury to the petitioner and the petitioner undertakes that the money claimed by the Railway Authorities shall be secured. It is true that, if the services are suddenly stopped and service through any other agency cannot be immediately arranged, the passengers will suffer. It will also be difficult for the the Railway Authorities to maintain the standard of service they are supposed to maintain.

Under such circumstances, taking a holistic view of the entire situation, this Court stays the operation of the letter dated September 17, 2025 for a period of three months. The petitioner shall invoke arbitration within the aforesaid period and constitute a Tribunal. The order of termination shall remain stayed unconditionally till 10^{th} October, 2025, within such time the petitioner will secure Rs. 9,69,90,228/-. The petitioner shall deposit Rs. 1 crore by way of demand draft in the office of the Principal Chief Commercial Manager, Eastern Railway, 3, Koilaghat Street, Kolkata and also furnish an unconditional bank guarantee of the balance amount. By this process, the entire claim will be secured. The demand draft shall be encashed and invested in an auto renewable interest bearing fixed deposit account, maintained with any nationalized bank. If the payment as directed hereinabove is made, the unconditional stay will continue for a period of three months or until further orders by the arbitrator, whichever is earlier. In case of non-compliance, this order shall stand automatically vacated without any further reference to this Court and the Railway Authorities shall proceed in accordance with law.

Needless to state that future licence fees for the succeeding periods shall be paid until further orders by the arbitral tribunal.

Both the parties will be at liberty to pray for further interim order before the learned arbitral tribunal.

TR/ (SHAMPA SARKAR, J.)