

OCD 7

ORDER SHEET
AP-COM/1105/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

FLEMINGO DUTYFREE SHOP PRIVATE LIMITED
VS
AIRPORTS AUTHORITY OF INDIA

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 22nd January, 2025.

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

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

The Court: This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 for setting aside/stay and/or recall of the order dated November 29, 2024, issued by the respondent. A further injunction is prayed for, restraining the respondent from demanding the payment of invoices raised towards EPOS charges.

Mr. Mitra, learned senior advocate appearing for the petitioner submits that the petitioner is being forced to pay charges for the EPOS system, which has been installed by a third party at the instance of the Airports Authority of India.

The contract does not provide that the petitioner is required to pay such charges. Accordingly, the petitioner contends that the notice dated November 29, 2024 should not be given effect to. The notice was issued by the Airports Authority of India through the Jt. General Manager (Commercial), NSCBI Airport, Kolkata. By the said notice, the Airports Authority of India called upon the petitioner to make payment of the outstanding dues amounting to Rs.723.52/- Lacs, failing which, the Airports Authority of India would be constrained to adjust the security deposits/bank guarantees and terminate the license. The petitioner is the licensee of the Airports Authority of India who permits retail outlets to operate from the area which has been licensed to the petitioner within the Airport.

Mr. Mitra draws the attention to this Court to the arbitration clause and also Clause 10.7.3 of the Concession Agreement dated July 18, 2016.

Mr. Sur, learned advocate for the respondent submits that the notice was issued as the petitioner failed to make payment by way of instalments as was assured by them in a meeting which was held sometime in May, 2024. The minutes of the meeting has been submitted before this Court. The minutes contained elaborate discussion as to how the Airports Authority was imposing the charges for the EPOS system. Although, Mr. Mitra submits that the said minutes was not signed by the petitioner, it is found that meetings were held and negotiations were on. I find from the contract that Clause (o) of 10.7.3 relating to Electronic Point of Sale (EPOS) makes the petitioner liable to pay cost of UPS batteries, printer heads, supplies, stationery and consumables.

Under such circumstances, this Court is not satisfied that the petitioner could make out an arguable case which would convince this court to pass an

injunction, restraining the respondent from taking steps in accordance with the provisions of the agreement and from claiming the outstanding. The Airports Authority in my, prima facie, view can claim some charges under the EPOS system. It also appears that by the notice dated November 29, 2024, license fee was claimed. The petitioner is obligated to pay the license fee under the terms and conditions of the agreement. The notice also contains a clause which states that the outstanding dues were on the ground of nonpayment of license fee/utility and facilitation charges/CAM charges/electricity charges/telephone bills/Misc. charges etc.

Under such circumstances, this Court cannot injunct the Airports Authority from proceeding under the agreement, by restraining them from giving effect to the impugned notice. Moreover, this Court finds from the records that by a letter dated June 27, 2023, the petitioner had already approached the authority, proposing a mode by which 60% of the EPOS charges up to the period May 31, 2022 would be paid by the petitioner at Goa, Kolkata and Trichy Airports.

It further appears that the meeting was held on May 7, 2024 after the petitioner's proposal and the petitioner assured that the payments would be made in instalments, without prejudice to its rights and contentions.

Mr. Sur submits that some payments have been made, excluding the EPOS charges. The amount payable will be adjudicated by way of the appropriate forum as per the arbitration clause. Mr. Sur further submits that the petitioner had already invoked arbitration by issuing a notice some time in 2024, but did not take any steps thereafter. The record reveals that the meetings for amicable

settlement, proceedings for mediation in respect of similar dues of other airports have already been held between the parties.

Under such circumstances, the application is disposed of without any relief.

The petitioner is at liberty to take appropriate steps in accordance with law.

The document supplied by the Airports Authority of India is taken on record.

(SHAMPA SARKAR, J.)