



\$~O-3

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

+ **ARB.P. 2139/2024**

P SIVA PRASAD

.....Petitioner

Through: Mr.Himanshu Pathak, Mr.Aman Jha,
Mr.Rishi and Mr.Amit Singh,
Advocates.

versus

INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED THROUGH ITS CHAIRMAN AND
MANAGING DIRECTOR & ANR.

.....Respondent

Through: Mr.Abhishek Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

%

30.01.2025

1. The facts of the case would indicate that the petitioner is the proprietor of M/s P Siva Prasad. The petitioner's firm was awarded Letter of License dated 27.12.2022 being successful bidder for E-tender by South-Central Zone, Indian Railway Catering and Tourism Corporation Limited for Refreshment Room (Integrated Kitchen Unit) on Platform Nos.6 and 7 of Vijaywada Railway Station.

2. According to the petitioner, after completion of the requisite formalities, an Agreement for Engagement of Service Provider for Operation, Maintenance and Provision of Catering Service through Refreshment Room (Integrated Kitchen Unit) at Vijaywada Railway Station, dated 02.05.2023 was executed between the parties. The petitioner



asserts that till September 2023, the total value of the food supplied as per the aforesaid agreed rate (including applicable taxes) amounts to ₹ 6,70,809/- and according to petitioner, the respondents however made a short payment of ₹ 5,53,926/- to the petitioner.

3. According to petitioner, the outstanding amount due and was payable to the petitioner till September 2023, is ₹97,716/-, however, the petitioner continued to supply lunch and dinner food packets till December 2023, as per the agreed terms and raised regularly bills thereof, hence, the current outstanding amount was ₹ 2,82,554/-. The petitioner thereafter sent a notice dated 24.04.2024 which was not replied by the respondents. Therefore, the petitioner has filed the instant petition.

4. The respondents by way of their response have opposed the contents made in the petition; and according to them, the payment was made as per the revised rate which was duly accepted by the petitioner. The respondents therefore contend that the appointment of an Arbitrator in the instant case would not serve any useful purpose and the same would only cause unnecessary prejudice.

5. Learned counsel appearing on behalf of the petitioner on the other hand contends that the position of law with respect to scope of Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as “A&C Act”) has been fairly well settled by various pronouncements of the Supreme Court.

6. Reliance is placed on behalf of the petitioner on the decisions of the Supreme Court in the case titled as ‘*Goquii Technologies Private Limited*



*v. Sokrati Technologies Private Limited*¹, ‘*SBI General Insurance Co. Ltd. v. Krish Spinning*²’ and ‘*Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899*,³’.

7. I have heard the learned counsel appearing for the parties and perused the record.

8. Recently, the Supreme Court in the case of ‘*Aslam Ismail Khan Deshmukh v. ASAP Fluids Pvt. Ltd.*⁴’, while putting quietus to controversy revolving around Section 11 of the A & C Act, has held that at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists – nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. The relevant extracts of the said decision reads as under:-

“It is now well settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists – nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims which have been discharged through “accord and satisfaction”, or cases where the impleadment of a non-signatory to the arbitration agreement is sought etc. In order to balance such a limited scope of judicial interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the arbitral tribunal may direct that the

¹ 2024 SCC Online SC 3189

² 2024 SCC OnLine SC 1754

³ 2023 INSC 1066.

⁴ 2024 SCC OnLine SC 3191.



costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and caused unnecessary harassment to the other party to the arbitration.”

9. A similar view has been taken by the Supreme Court in the case of ***Goquii Technologies Private Limited*** and ***SBI General Insurance Co. Ltd.***

10. In view of the various pronouncements of the Supreme Court, it is fairly well settled that the scope of inquiry at the stage of appointment of an Arbitrator is limited to the scrutiny of *prima facie* existence of the arbitration agreement and nothing else. Only malafide and non-existent claims need to be weeded out.

11. In the instant case, looking at the facts would clearly indicate that there exists validly executed agreement between the parties. Clause 5 of the said agreement reads as under:-

“5. ARBITRATION

5.1	<i>a. In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract or the respective right and liability of the parties on any matter in question, with reference to the contract. the Parties agree to use their best efforts to attempt to resolve all disputes in prompt, equitable and good faith. In the event the Parties are unable to do so, such party may submit demand in writing for reference of dispute to arbitration as prescribed herein.</i> <i>b. The parties will submit demand in writing that the dispute/differences be referred to arbitration. The demand for arbitration shall specify the matters which are in question or subject of dispute or differences as also the amount of claim item wise.</i> <i>c. Only such dispute or differences, in respect of which the demand has been made, together with counter claims of setoff given by IRCTC shall be referred to arbitration and other matters shall not be included in the reference.</i> <i>d. In the event of demand made as mentioned herein above, such dispute or difference arising under any of these conditions or in connection with this contract(except as to any matters the decision of which is specially provided by these or the special conditions) shall be referred to Sole Arbitrator from the panel of Arbitrators appointed by Chairman and</i>
------------	--



	<i>Managing Director of IRCTC. The award of arbitrator shall be final and binding on the parties to this contract. The venue of the Arbitration shall be at New Delhi. The fees and expenses of the Arbitration tribunal and all other expenses of the Arbitration shall be borne jointly by the Parties in equal proportion. The Arbitration fee shall be calculated as per circular dated 18.10.2019.</i>
--	---

12. The submissions made by learned counsel appearing on behalf of the respondents, therefore, shall be capable of being considered by the concerned Arbitrator and on due consideration, the arbitration proceedings can be taken to their logical end.

13. However, at this stage, the right which has accrued in favour of the petitioner to invoke arbitration cannot be curtailed.

14. Accordingly, the Court finds it appropriate to appoint an Arbitrator leaving all rights and contentions of the parties to be adjudicated and determined by the concerned Arbitrator. In view thereof, the Court appoints Mr. Shantanu Sharma, Advocate (Mob No.+91 9755922222, Email- shantanusharma862@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.

15. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the A&C Act.

16. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

17. The parties shall share the arbitrator's fee and arbitral cost, equally.

18. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the Sole Arbitrator



on their merits, in accordance with law.

19. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties. All rights and contentions of the parties in this regard are reserved. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.

20. Accordingly, the instant petition stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

JANUARY 30, 2025

Nc/@m