Form No.J(2)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Sandip Kumar De

FMA 887 of 2026
with
CAN 1 of 2026
with
FMAT 266 of 2026

Group General Manager of Indian Railway Catering and Tourism Corporation Ltd., East Zone
Vs.
Sunshine Caterers Pvt. Ltd. and Ors.

For the appellant	:	Mr. Arijit Bardhan, Mr. Sarosij Dasgupta, Mr. Sabyasachi Dey, Ms. Afreen Begum, Mr. Gourav Mondal, Ms. Chayanika Chatterjee, Advs.
For the respondents	:	Ms. Srijani Mukherjee, Mr. Lalratan Mandal, Advs.
Heard on	:	August 14, 2026.
Judgment on	:	August 14, 2026.

Sabyasachi Bhattacharyya, J.:

1. Affidavit of service filed today be kept on record.
2. In view of the reliefs in the appeal having been sought primarily against the respondent no. 1, service of notice on the other respondents is dispensed with.
3. Since arguable questions have been raised, we admit the appeal to be heard on the grounds taken in the memorandum.
4. As the ambit of the appeals is brief, we take up the appeals themselves for hearing along with the application.
5. By the first impugned order, a prayer for ad-interim injunction, sought by the respondent no. 1, has been granted to the effect that the present appellant shall not stop the respondent no. 1 herein to continue with service till July 20, 2026.
6. The order having been extended subsequently, the other miscellaneous appeal, bearing FMAT 266 of 2026 has been preferred against the extension order.
7. Both the appeals are taken up together.
8. The brief backdrop of the case is that the respondent no. 1 turned out successful in a tender floated by the appellant and, pursuant to the same, was granted contract for supply of cooked food in mobile train services.

9. The contract was granted initially for a period of five years and was subsequently extended from time to time.

10. Due to the COVID-19 Pandemic which intervened, a two years' period was granted as a dies-non period, for a period equivalent to which the contract was extended, lastly till February 16, 2026.

11. Subsequently, by a notification/office memorandum issued by the Railway Ministry dated May 5, 2026, it was *inter alia* given out that certain instructions regarding *force majeure* clauses were being issued thereby.

12. The said office memorandum containing such directions, however, was applicable to contractual obligations which had to be completed on or after February 28, 2026.

13. The respondent no. 1 took out an application under Section 9 of the Arbitration and Conciliation Act, 1996, in connection with which the present impugned orders were passed, alleging that even subsequent to February 16, 2026, the contract was extended and was still in force. In view of such prayer of the appellant, the learned Trial Court, taking up the Section 9 application, passed the impugned ad interim order on the premise of the "notice dated May 5, 2026".

14. Learned counsel appearing for the appellant submits that the said notification/office memorandum dated May 5, 2026 was a general notification and applied only to contracts which would have ended on February 28, 2026, whereas the contract of the respondent no. 1, even taking into account the dies-non period, expired on February 16, 2026.

Thus, the said notification was not attracted to the respondent no. 1's case at all.

15. Secondly, it is argued that the respondent no.1 has suppressed that there was an earlier application under Section 9 of the 1996 Act filed by it, in which initially an ad-interim order was passed, pursuant to which the present appellant was constrained to keep the contractual relationship between the parties alive, although the contract had actually expired, by issuing travelling allowances to the respondent no.1.

16. However, subsequently, a challenge was preferred against the said ad-interim order passed in the earlier round, which challenge was ultimately held to be infructuous, since the initial order obtained by the respondent no. 1 was not extended further. Such facts, it is argued, were suppressed before the Trial Court.

17. Learned counsel next argues that admittedly the respondent no. 1 participated in a subsequent tender floated for award of contract in respect of the self-same cooked food service but turned out unsuccessful. Having once participated in the contract and having failed to come out successful, it is argued that the respondent no. 1, in the garb of the present application under Section 9 of the 1996 Act, could not have sought a relief indirectly which it could not get directly, by stalling the entire tender process.

18. Learned counsel appearing for the respondent no.1 places reliance on a communication between the Additional General Manager, IRCTC

and the Chief Commercial Manager of the East Central Railway dated June 16, 2026, wherefrom it transpires that a request was made to the Railway authorities to issue travelling allowance to the on-board catering staff and supervisor of the catering licensee, i.e. the respondent, as per Commercial Circular issued by Railway Board for the period from June 17, 2026 to June 19, 2026. It is submitted that such request endorses the stand of the respondent no.1 that the contract was extended much beyond February 16, 2026 and, as such, the office memorandum dated May 5, 2026 was squarely applicable.

19. It is further submitted that although the respondent no. 1 had participated in an earlier tender floated for the period after expiry of the respondent no. 1's contract, the said fact *per se* does not preclude the respondent no. 1 from claiming right under the dies-non period, the benefit of which was given to the respondent no. 1 in extending its contract.

20. From a perusal of the materials, we find that in paragraph no. 14 of the application under Section 9 of the 1996 Act itself, the respondent no. 1 categorically admits that a fresh tender had been issued in respect of the self-same trains pertaining to which the respondent no. 1's contract relates, during existence of the earlier contract of the respondent no. 1, which was opened on February 22, 2024.

21. It is also admitted that the respondent no. 1 participated in the said tender.

22. Obviously, the respondent no. 1 could not have succeeded in the same since, otherwise, there would be no occasion for the respondent no. 1 to seek a relief that the catering service to the concerned trains not be handed over to a third party.

23. After turning out unsuccessful, having participated in the tender, the respondent no. 1 could not now turn back and seek to challenge the grant of contract in terms of the self-same tender to the successful bidder in an indirect manner, which could not be directly sought by the respondent no.1.

24. Having participated in the tender and turned out unsuccessful, the respondent no.1 is now estopped from challenging the tender and consequentially the grant of a contract in terms thereof to the successful tenderer.

25. Secondly, we find from paragraph no. 12 of the Section 9 application that it is an admitted position that the two years' dies-non period for the COVID-19 pandemic was given to the appellant and even the extended period expired on February 16, 2026.

26. In the very next paragraph, i.e. paragraph no. 13 of the application, it has been stated by the respondent no.1 that after expiry of the said period, the present appellant, "from time to time extended the said contract and the said contract is still in force". However, conspicuously, although the dates and particulars of the previous extended contracts were categorically enumerated in the earlier paragraphs, the averment of the contract having been extended after

February 16, 2026 is absolutely vague and devoid of any particulars whatsoever, even regarding the period for which the extension was granted. Also, we do not find any supporting document to substantiate such claim of further extension.

27. In this regard, the respondent no.1 places reliance on a request by the appellant to the Railway authorities to grant a travelling allowance for two days between June 17 and June 19, 2026. However, we find evidence galore from the annexures to the Section 9 application itself that there were numerous earlier occasions when similar travel allowances were requested for. In each of such previous requests, we find specific mention of the contract having been renewed for the period from March 1, 2019 to February 28, 2024 and being further extended up to February 16, 2026 (including the dies-non period).

28. However, importantly, no such extension or date of expiry of contract is mentioned in the request for travelling allowance dated June 16, 2026 relied on by the respondent no.1. Thus, such isolated document, which is divorced from the general tenor of all the other documents produced by the respondent no.1, cannot *per se* create a right to plead further extension of the contract period. From the other documents annexed to the Section 9 application, it is evident that the contract, including the extended dies-non period, lastly expired on February 16, 2026.

29. Hence, in any event, the office memorandum dated May 5, 2026, which spoke about the period pertaining to February 28, 2026 as the

last date of expiry of contract to come within the same, could not have been attracted to the present case at all.

30. Even otherwise, we find that the office memorandum dated May 5, 2026, which was construed by the learned Trial Judge as a notice giving rise to the cause of action for the Section 9 application, could not be read as such, since the office memorandum was a general notification intended for all concerned and did not apply to the contract of the respondent no. 1 even *prima facie.*

31. Thus, the very premise of the impugned order is bad in law and in fact.

32. In such view of the matter, even without taking into consideration the earlier round of litigation as alleged by the appellant, since those were not placed before the learned Trial Judge at the time of passing of the impugned ex parte ad interim order, we come to the specific conclusion that the impugned order is perverse and is contrary to the averments and materials placed before the learned Trial Judge.

33. Accordingly, FMA 887 of 2026 is allowed on contest, thereby setting aside the impugned order, bearing Order no. 2 dated June 20, 2026 passed by the learned Judge, Sixth Bench, City Civil Court at Calcutta in Miscellaneous Case no. 5890 of 2026.

34. Consequentially, FMAT 266 of 2026 is also allowed on contest, thereby setting aside the impugned order dated July 20, 2026 passed by the learned Judge, Sixth Bench, City Civil Court at Calcutta in Miscellaneous Case no. 5890 of 2026.

35. The connected application, bearing CAN 1 of 2026, also stands disposed of.

36. No order as to costs.

37. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance of requisite formalities.

I agree. (**Sabyasachi Bhattacharyya, J**.)

(**Sandip Kumar De, J**.)

AD -7-8
Ct No.16
14.08.2026
(SSS)