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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 24th October, 2011

+ **FAO(OS) 513/2010**

MMTC LIMITED Appellant
Through: Mr.Vishal Malhotra, Advocate

versus

LEGEND HOLDING PVT.LTD. Respondent
Through: Mr.Rishabh Wadhwa, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE S.P.GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Request made to adjourn the matter due to non-availability of senior counsel is declined inasmuch as we are told that the senior counsel is abroad. On 13.7.2011 the matter was adjourned for today on account of adjournment slip circulated and the appellant ought to have ensured presence by a learned senior counsel if it desired arguments to be advanced by a senior counsel.

2. Request for adjournment being declined, matter has been heard.

3. Facts are not in dispute.
4. On 23.11.1995 appellant MMTC entered into a contract with M/s.National Food Authority of Philippines (for short 'NFA') pertaining to supply of 75,000 MTs of Non Basmati Super Fine White Rice and in turn MMTC entered into a back to back contract with Legend Holding Pvt. Ltd. which obliged Legend Holding Pvt. Ltd. to supply the rice in question by delivering the same at Philippines.
5. The respondent, Legend Holding Pvt. Ltd. entered into contract(s) with 5 rice suppliers and at the asking of Legend Holding Pvt. Ltd., MMTC opened Letters of Credit in the names of the 5 rice suppliers. The 5 suppliers failed to supply rice.
6. Non-supply of rice to NFA resulted in NFA invoking provisions of the Grain and Food Trade Association resulting in price of rice being reduced from US \$343 per MT to US \$337.86 per MT with shipping time extended.
7. To ensure supply, fresh contracts were awarded by Legend Holding Pvt. Ltd. to 7 rice suppliers in whose name MMTC opened Letters of Credit.
8. Rice was supplied. Admittedly, NFA paid ₹88,32,72,532/- to MMTC.
9. Dispute arose between MMTC and Legend Holding Pvt. Ltd., claims and counter claims were referred to arbitration.
10. Certain claims were given up by Legend Holding Pvt. Ltd. before the Arbitrators and of the ones which were pressed the subject matter of the challenge to the Award was the dispute pertaining to Discharge Port Demurrage, a claim allowed in favour of Legend Holding Pvt. Ltd.
11. Arguments advanced before the learned single Judge,

which have been advanced before us is that payment of Discharge Port Demurrage was governed by a settlement as per un-dated letter referred to in para 72 of the award.

12. The Award, para 77 at page 53, noted by the learned Single Judge deals and interprets the said letter.

13. The argument advanced as noted by the learned Single Judge, is concededly the argument which was advanced by the appellant. It has been noted by the learned Single judge in para 8 of the impugned order which we reproduce. It reads as under:

“8. The principal arguments which have been canvassed by Mr.Parag P.Tripathi, learned ASG appearing on behalf of petitioner are that the payment of Discharge Port Demurrage was made by the petitioner as a “Settlement” in terms of the undated letter referred to in para 71 of the Award. The respondent had specifically agreed that it would be bound by any settlement made by MMTC while finalizing the claims of the Seven Shippers who had provided the ships for transport of rice from India to Philippines. It is submitted by Mr.Tripathi that this Settlement i.e. the payment of Discharge Port Demurrage, has to be understood as a settlement contemplated and provided for in the said undated letter. A copy of the said undated letter is to be found on the record of the Arbitral Tribunal at Exhibit D-V at page 26 of the Evidence Volume along with the affidavit evidence of Mr.D.S.Gulati, Chief General Manager, MMTC.

14. The learned Single Judge has thereafter reasoned in paras 9 to 14 as under:

9. At first blush, the argument may look attractive. However, on an examination of the Award, it is clear that the Award proceeds on the basis that NFA itself has admitted that the

payment of Discharge Port Demurrage was to be made by NFA (para 77 page 53). Therefore, on the basis that since this payment was admitted by NFA, MMTC cannot be allowed to mulct the liability on Legend and debit this payment to the account of Legend.

10. It has been further contended by the learned Counsel for MMTC that MMTC had communicated the message received from NFA by its letter of 31.10.1997 to the respondent. The said letter of MMTC extracted in full, the communicated received from NFA to MMTC. This letter of MMTC is extracted at para 40 of the Award. This communication is in the form of a Table/Chart which in Column 3 makes it clear that even as per NFA's own computation, the Discharge Port Demurrage was payable by NFA to the tune of USD 2,34,052.10.

11. Further, in Column 4, as per NFA calculation, after deducting this amount, the balance dues payable to NFA by MMTC were USD 303,866.52.

12. Once this is so, it follows that as per NFA's own computation, NFA was liable to pay Discharge Port Demurrage though only to the extent of USD 234,052.10. In this background, the decision of the Tribunal that this money could not be withheld by MMTC from Legend on the ground that NFA had not actually paid this amount, appears to me not only to be a plausible view but in fact the correct view. Once NFA itself has admitted in writing that the sum of USD is payable by NFA towards Discharge Port Demurrage, then surely irrespective of whether or not, MMTC decided to litigate NFA, MMTC cannot be allowed to recover these monies from Legend. This contention therefore is without any merit and is rejected.

13. The second contention raised by MMTC is that there is an overlap between the Claims of the respondent and the counter claims raised by

MMTC. Therefore, it is argued on behalf of MMTC that since all the other Claims of respondent have been rejected, the corresponding counter claims of the petitioner should be accepted. The Arbitral Tribunal has proceeded on the basis that by a letter dated 25.5.1996, MMTC itself returned the Bank Guarantee to Legend which had been furnished to MMTC for the performance of the Back to Back Contract, by stating that the Contract was completed by Legend "in full". The Tribunal invoking the principle of estoppels, proceeded to hold that since the bank guarantee was discharged on account of the contract being performed in full, MMTC was not be allowed to turn back and raise counter claims.

14. I find no fault with the approach adopted by the Arbitral Tribunal. It is settled law that if the view of the arbitrator is a plausible one, the Court cannot substantiate its own view in its place and would not, therefore, merit any interference. (Refer Smitha Conductors Ltd. vs. Euro Alloys Ltd. reported in (2001) 7 SCC 728, para 15, page 739; BOC India Ltd. vs. Bhagwati Oxygen Ltd. reported in (2007) 9 SCC 503, para 27, page 512)."

15. We agree with the reasoning of the learned Single Judge which we adopt and thus we do not re-pen the same reasoning in our own words.

16. Indeed, the learned Single Judge has correctly held that where 2 views were plausible the Court cannot substitute the view taken by the Arbitral Tribunal.

17. We highlight that it is not a case where the objections relate to a kind of a situation contemplated by the decision of the Supreme Court reported as 2003 (5) SCC 705 ONGC Vs. Saw Pipes Ltd.

18. The issue in the instant case relates to an interpretation of the terms of the contract with reference to the correspondence exchanged between the parties.

19. The appeal is dismissed but we refrain from imposing any costs.

(PRADEEP NANDRAJOG)
JUDGE

(S.P.GARG)
JUDGE

OCTOBER 24, 2011
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