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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **FAO(OS) Nos.504/2011, 507/2011, 531/2011 & 532/2011**

FOOD CORPORATION OF INDIA

..... Appellant

Through : Mr.Sukumar Pattjoshi and Mr.Satyajit Patra,
Advocates for the Appellant in FAO(OS)
Nos.531/2011 and 532/2011.

Mr.A.S.Chandhiok, ASG with Mr.Sukumar
Pattjoshi and Mr.Satyajit Patra, Advocates for the
Appellant in FAO (OS) No.504/2011.

Mr.Vikas Pahwa, Sr.Adv. with Mr.Sukumar
Pattjoshi and Mr.Satyajit Patra, Advocates for the
Appellant in FAO(OS) No.507/2011.

versus

M/s GANESH RICE MILLS {FAO (OS) No.504/2011}
M/s MANPREET RICE & GENERAL MILLS {FAO (OS) No.507/2011}
M/s KHALSA RICE & GENERAL MILLS {FAO (OS) No.531/2011}
M/s SHIV SHAKTI RICE TRADERS {FAO (OS) No.532/2011}

..... Respondents

Through : Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
01.11.2011

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CM Nos.19276-277/2011 {(FAO (OS) No.504/2011}
CM Nos.19285-286/2011 {(FAO (OS) No.507/2011}
CM Nos.19894-895/2011 {(FAO (OS) No. 531/2011}
CM Nos.19897-898/2011 {(FAO (OS) No. 532/2011}

Allowed subject to just exceptions.

CM No.19896/2011 (For Condonation of Delay of 8 days in filing the appeal)

For the reasons stated in the application, the delay of 8 days in filing the appeal is condoned and the application is allowed.

FAO (OS) No.504/2011
FAO (OS) No.507/2011
FAO (OS) No. 531/2011
FAO (OS) No. 532/2011

The appellant/Food Corporation of India (FCI) had entered into agreements for storage/milling of FCI paddy with different millers. There were disputes which arose *inter se* the parties and various arbitration proceedings were pending when settlements are stated to have been arrived between the parties which are more or less in similar terms. Applications were filed by the millers under Sections 30 & 32 of the Arbitration and Conciliation Act, 1996 ('the said Act' for short) to bring to an end the various arbitral proceedings, but the appellant took a different stand that these settlements which had been executed had not received the imprimatur of the Managing Director and were not binding *inter se* the parties. In respect of the awards in question in the appeals before us, the arbitrator has found that the deed of settlement signed between the parties could not be said to be non-binding and thus the applications filed by the respondents must succeed and the proceedings stand terminated and the claim of the appellant is rejected.

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It is not in dispute that the agreements entered into with the millers did not mention that the said deed of settlement would come into force only on a further approval of the Managing Director. However, certain proceedings internal to the appellant were relied upon to canvass that the settlements had not reached a binding character.

A learned single Judge of this Court while dealing with the objections under Section 34 of the said Act has taken an identical view in a number of matters holding that the view taken by the arbitrator cannot be faulted. Not only that, the view taken by the learned single Judge has been affirmed by a coordinate Division Bench of this Court on 19.10.2011. We may refer to one of the orders in FAO(OS) No.489/2011 in Food Corporation of India v. M/s Deep Rice Mills. We consider it appropriate to extract the relevant portion of the order as under:

“10. It is not in dispute that the deed of settlement dated 15.7.2006 has been signed by the Area Manager FCI and M/s.Deep Rice mills.

11. FCI challenges the award alleging that the settlement was not approved by the Chairman-cum-Managing Director FCI.

12. The learned Arbitrator has posed the following questions to FCI:-

(a) Whether the parties were informed that the settlement was subject to the approval of the Chairman-cum-Managing Director?

(b) Whether M/s.Deep Rice Mills were ever informed that the Area Manager did not have the authority to enter into the settlement?

(c) Whether any disciplinary action was taken against the Area Manager for signing the deed of settlement?

13. FCI gave no answer. It just said that the Area Manager, FCI did not have the authority to enter into the settlement.

14. Now, we find it surprising that if the Area Manager had no authority to sign the deed of settlement, why no disciplinary action has been taken against him till date. We highlight that learned counsel for the appellant concedes that no disciplinary action has been initiated or is intended to be initiated against the Area Manager, FCI.

15. FCI is a statutory corporation. It is not the Government of India. Thus, concept of Business Allocation Rules would not be applicable to FCI. It relates to the indoor management of FCI as to who has the authority to act on behalf of FCI it was for FCI to have led evidence before the learned Arbitrator to show that the Area Manager was not authorized to enter into any such agreement and attempt made before us to rely upon some office orders is of no use. We highlight that before the learned Arbitrator the only stand taken was that the agreement in question did not have the approval of the Chairman-cum-Managing Director of FCI.

16. It was never told to M/s.Deep Rice Mills that the Area Manager has no authority to execute any deed of settlement. Learned counsel for the appellant has no answer to the question: If the Area Manager had no authority to enter into any settlement why was he put in the forefront to negotiate. To the preceding sentence, we need to add that learned counsel for FCI admits that a policy decision was taken to negotiate with the rice millers and try and resolve the dispute across the table. Learned counsel further concedes that it was pursuant to the said policy decision that the Area Manager, FCI commenced the negotiations with M/s.Deep Rice Mills. Counsel concedes that there is no material with FCI to show that the brief entrusted to the Area Manager, FCI was to do preliminary ground-work i.e. if a settlement was possible, to outline the contours thereof and before finalizing the settlement to take the approval from the senior officers.

17. Be that as it may, we are concerned with the validity of an award and the view taken based upon the evidence. The issue adjudicated by the Arbitrator is: Whether the settlement in question binds FCI. Within the contours of Section 34 of the Arbitration & Conciliation Act 1996, we see no scope to set aside the award and therefore we concur with the view taken by the learned Single Judge that the award cannot be set aside.

18. The appeal is dismissed in limine.

19. No costs.”

It is in view of the aforesaid that at the inception itself we posed a query to learned ASG as to how the present appeals were different from the ones dealt with by a coordinate Bench of this Court. Learned ASG fairly states that the issue raised is identical but that he would endeavour to persuade us to take a different view of the matter. Learned ASG vehemently contended that the issue of jurisdiction arises in this case which has neither been dealt with by the learned single Judge nor by the Division Bench and that he is entitled to urge the same.

We have considered the said plea despite the fact that it is not known as to why the appellant did not choose to canvass such a plea before a coordinate bench of this Court when the matter was dealt with recently only on 19.10.2011. The plea of the learned counsel for the appellant is based on Section 16 r/w Section 32 of the said Act. Learned counsel for the appellant contends that Section 16 of the said Act comes into play and if the case of the appellant was found to be falling within Section 30 & 32(2)(c) of the said Act, all that the arbitrator had to do was to give a finding that it had become unnecessary or impossible to give a finding on merits.

The crux of the submissions is that the arbitrator ought to have stopped short of the last sentence in the awards in question in the appeals before us and that if the respondents had succeeded in the applications only the proceedings ought to have been terminated and the claim of the appellant ought not to have been rejected leaving it for the appellant to pursue any other legal remedy, if so available.

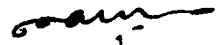
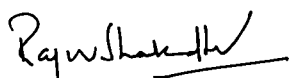
We are unable to persuade ourselves to agree with the submission for the reason that the applications filed by the respondents were clearly within the ambit of Sections 30

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& 32 of the said Act arising from the factual position that a binding settlement had been arrived at *inter se* the parties and thus there was no dispute or *lis* pending which was liable to be adjudicated. The appellant disputed this position to contend that the settlements had not received the imprimatur of the Managing Director and thus had failed to attain a binding character. The arbitrator thus necessarily was required to go into the question as to whether a binding settlement had or had not been arrived at between the parties and whether there were any claims which were required to be adjudicated upon by the arbitrator. It is because of such averments that the arbitrator arrived at the conclusion that the settlements had a binding force and in view of the settlements, no *lis* survived and thus the proceedings stood terminated and the claim of the appellant automatically stood rejected. We thus find no fault with the arbitrator taking such a view. The invocation of Section 16 of the said Act is only thus a red herring. In order to decide whether or not an arbitrable dispute subsisted pursuant to the execution of the settlement deed, the arbitrator necessarily was required to exercise jurisdiction.

There is no other aspect urged before us and rightly so in view of the judgment of the Division Bench of this Court in Food Corporation of India v. M/s Deep Rice Mills's case (supra).

Dismissed in terms of the order passed in Food Corporation of India v. M/s Deep Rice Mills's case (supra)..


SANJAY KISHAN KAUL, J

RAJIV SHAKDHER, J

NOVEMBER 01, 2011/dm