

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

+ **CM(M) No.359/2009**

% **17th July , 2014**

FOOD CORPORATION OF INDIAPetitioner
Through: Mr. Karunesh Tandon, Advocate.

VERSUS

INDIAN COUNCIL OF ARBITRATION & ANR. Respondents
Through: Mr. Yakesh Anand, Advocate for
respondent No.1.
Mr. Ramesh Kumar, Advocate for
respondent No.2 with Mr. J.C. Seth.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This is a petition under Article 227 of the Constitution of India by the Food Corporation of India (FCI) which states that FCI/petitioner should not be directed to pay the enhanced fee as claimed by the Indian Council of Arbitration.

2. Powers under Article 227 of the Constitution of India are exercised with respect to an order passed by the Court or a Tribunal, i.e judicial order.

3. On a query by the Court, counsel for the petitioner had no option but to concede that there is no order of the arbitrator which is being challenged by the petitioner. If that be so, and the issues are as to what amounts the Indian Council of Arbitration can charge, the same can be decided in an appropriate proceedings, but definitely not by means of a petition under Article 227 of Constitution of India.

4. Needless to state that the petitioner has not been correctly legally advised inasmuch as jurisdiction under Article 227 of Constitution of India is not an original jurisdiction like a suit where issues of fact and law are decided with respect to entitlement under any contract or any rule with respect to payment of fees of an arbitrator.

5. I note as stated by the counsel for the respondent no.1 that arbitration proceedings have been completed in most of the about 325 arbitration cases pertaining to disputes between the petitioner and the millers.

6. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

JULY 17, 2014

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