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

+ **FAO(OS) 473/2015**

FOOD CORPORATION OF INDIA

..... Appellant

Through: Mr Mohan Lal Sharma

versus

M/S BHAGWATI RICE MILLS & ORS

..... Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **24.08.2015**

CM No. 16226/2015 (exemption)

The exemption is allowed subject to all just exceptions.

CM No. 16228/2015 (delay in re-filing)

The delay in re-filing is condoned.

The application stands disposed of.

FAO(OS) 473/2015 and CM No. 16227/2015

This appeal is directed against the order dated 25.02.2015 passed by a learned Single Judge of this court in OMP No. 165/2013 which was a petition filed by the appellant under section 34 of the Arbitration and Conciliation Act, 1996 challenging the award dated 11.10.2012 passed by the sole arbitrator in disputes which had arisen between the parties out of a milling agreement dated 26.10.1994. In terms of the said agreement, the appellant was to supply paddy to the respondents for the purposes of milling and the respondents were to return milled rice to the appellant. It is the case of the appellant that this was to be done within a specific period of time and that time was of the essence of the contract.

It so happened that the entire quantity of paddy (78996 bags of paddy) which was supplied to the respondents was not milled during the aforesaid stipulated time and only 55700 bags of paddy was milled. The claim of the appellant is in respect of the balance bags of paddy which the respondents ought to have milled and supplied rice to the appellant. On the other hand, the case of the respondents was that time was extended and, therefore, there was no question of any liability on the part of the respondents. The learned arbitrator has gone into the details of the evidence and concluded that time had been extended by the appellant and that during that period there was a change in policy of the Government of India, as a result of which paddy could be sold in the open market and the appellant had permitted millers to purchase the paddy in open sale. Consequently, the balance paddy which was not milled was put to sale and it so happened that the respondents purchased the same from the appellant. The view taken by the learned arbitrator was that the appellant itself has acquiesced in the alleged failure by the respondent to discharge its obligations. The learned Single Judge has opined that this was a plausible view and that the learned arbitrator has made the award after a detailed analysis of the evidence and nothing perverse or irrational has been pointed out as to warrant any interference. The finding with regard to the extension of time is a finding of fact. That is purely within the domain of the Arbitral Tribunal and the learned Single Judge has rightly not interfered with the Award.

There is no merit in the appeal. The same is dismissed.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

AUGUST 24, 2015 / SU