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

+ CONT.CAS(C) 878/2012 & CM 13900/2014

FOOD CORPORATION OF INDIA Petitioner

Through: Mr. S. Pattjoshi, Sr. Adv. with
Mr.Mohan Lal Sharma, Adv.

versus

D SENGUPTA AND ORS Respondents

Through: Mr. Vaibhav Joshi, Mr. Vivek
Mathur, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **23.08.2016**

1. Vide order dated 1st September, 2011 in OMP 296/2011, this Court disposed of the petition with the consent of the parties. The order dated 1st September, 2011 is reproduced hereunder:

“Learned counsel for the respondent has taken instruction. With the consent of the parties, this petition is disposed of in the following terms:

- 1. The mandate of Arbitrator, Mr. Ashok Kapur stands terminated by mutual consent of the parties.*
 - 2. The fresh Arbitrator may be appointed by the Indian Council of Arbitration who has a legal background. The arbitral proceedings shall be continued from the stage left by the earlier Arbitrator.*
 - 3. If any arbitration fees is payable under the rules of the Indian Council of Arbitration, the same shall be borne by the petitioner and not by the respondent.*
 - 4. In case, the petitioner fails to pay the fees, the petitioner is agreeable to its defence being struck off.*
- The present petition stands disposed of, in the aforesaid terms. The parties shall bound by the aforesaid terms.”*

2. In view of the termination of the mandate of Mr. Ashok Kapur as Arbitrator, Indian Council of Arbitration appointed a new arbitrator, namely,

Mr.S.M. Aggarwal, Retired Additional District Judge who has passed an order dated 28th September, 2012.

3. The petitioner has invoked the contempt jurisdiction of this Court on the ground that the Indian Council of Arbitration has violated the order dated 1st September, 2011.

4. Vide order dated 19th December, 2012, the notice of this petition was issued to the respondents and the interim order was passed to the effect that no final award shall be passed by the learned arbitrator. In view of the interim order dated 19th December, 2012, the arbitration proceedings have not been concluded and are still pending.

5. This Court is of the prima facie view that the contempt jurisdiction is not warranted in the present case and the petitioner should avail appropriate legal remedies under the Arbitration and Conciliation Act, 1996.

6. This petition is disposed of with liberty to the petitioner to avail appropriate legal remedies available under the Arbitration and Conciliation Act, 1996 at this stage or after the passing of the final award.

7. The notice dated 19th December, 2012 is discharged. The interim order dated 19th December, 2012 is vacated.

8. The pending application is disposed of.

9. This Court has not expressed any opinion on the merits of this case which shall be considered by the learned arbitrator.

10. Copy of this order be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

AUGUST 23, 2016

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