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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 543/2015

FOOD CORPORATION OF INDIA

MOGA, PUNJAB

..... Petitioner

Through: Mr. Mohan Lal Sharma, Advocate.

versus

O.P. RICE & GENERAL MILLS & ANR.

..... Respondents

Through: Mr. Siddharth Dutta and Kumar

Dushyant Singh, Advocates for Respondent No.1.

Mr. Vaibhav Joshi and Ms. Sweta Singh,

Advocates for Respondent No.2.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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03.11.2016

1. This is a petition filed by the Food Corporation of India under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act') praying that this Court should appoint an Arbitrator from the list of Arbitrators maintained by the Indian Council for Arbitration ('ICA') so that arbitration proceedings may re-commence in terms of the order passed by this Court earlier on 24th September 2012 in a time bound schedule.

2. The background to the present petition is that pursuant to the policy framed by the Government of India, the Petitioner entered into a milling agreement with the Respondent No.1 during the crop year 1994-95 in terms of which the Respondent millers agreed to provide storage of paddy in their

mill premises to mill the same and supply the resultant rice thereof in terms of the said contract.

3. Clause No. 21 in the said agreement read as under:

“21. All disputes or differences whatever arising between the parties out of or relating to the agreement meaning and operation or effect of this agreement or the breach thereof shall be settled by the arbitration in accordance with the rules of arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding of the parties. The Sr. Regional manager/Zonal manager of the corporation shall appoint/nominate arbitrator out of persons in the panel of arbitrators maintained by ICA. It is the term of this contract that in the event of arbitrator being transferred, vacation of office, death or inability shall appoint another person maintained by ICA to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage where it was left by his predecessor.

Provided further that any demand for arbitration in respect of any claim(s) of the Miller, under the contract shall be in writing and made within one year of the date of completion of expiry of the period of contract. If the demand is not made within the period the claim(s) of the Millers shall be deemed to have been waived off and the absolutely barred and the Corporation shall be discharged and released of all liabilities under the contract in respect of these claims.

The cost of the proceeding in connection arbitration shall be the discretion of the arbitrator who may make suitable provision for the same in his award.

Subject as aforesaid, the Arbitration Act, 1940 shall apply to the arbitration proceedings.”

4. According to the Petitioner, the Respondent failed to comply with its obligations under the milling contract within the time stipulated. Pursuant to the directions issued by the High Court of Punjab and Haryana in a public interest litigation, the Petitioner had to dispose of the unmilled paddy in order to mitigate the losses. Notices were sent by the Petitioner demanding the recoverable amount of the losses suffered by the Petitioner due to failure by the Respondents to fulfil their contractual obligations.

5. The Petitioner lodged a claim with ICA on 26th February 1998 and also deposited the registration fees. However, by letter dated 4th March 1998 the ICA declined to proceed with the arbitration on the ground that the arbitration clause in the agreement was not in conformity with the ICA's arbitration clause and that the ICA would proceed in the matter only on receipt of a fresh agreement between the parties incorporating an arbitration clause consistent with that of the ICA.

6. In the above circumstances, an arbitration application was filed in this Court by the Petitioner along with several similar applications which were disposed of by an order dated 10th February 2000 holding that the applications were premature and that in terms of the arbitration clause in the agreement the Petitioner had to appoint the Arbitrator.

7. Aggrieved by the above order, the Petitioner approached the Supreme Court. By a detailed judgment dated 17th July 2003 in Civil Appeal No. 4655-4809/2003 arising out of SLP (C) Nos. 15578-15732/2000 the Supreme Court allowed the appeals of the Petitioner and directed the ICA to

forthwith and not later than sixty days from the date of the order to nominate the Arbitrator.

8. Thereafter the ICA wrote to the Petitioner seeking the arbitration fees as per its revised schedule effective from 1st January 2005. The Petitioner declined to pay the revised fees. As a result, there was no progress in the arbitral proceedings. The Petitioner then filed applications in this Court in the arbitration applications filed earlier. By an order dated 9th November 2009, this Court directed ICA to reconstitute the AT with the direction that “ICA on its part would ensure that arbitral tribunals are immediately constituted and the 384 arbitration cases are disposed of as expeditiously as possible.”

9. As far as the present case is concerned, pursuant to the above order the matter went before a sole Arbitrator nominated by the ICA who gave an Award on 23rd May 2011. However, the said Award was challenged in this Court by Petitioner by filing O.M.P. No. 748 of 2011. The said petition was allowed by this Court by an order dated 24th September 2012 setting aside the Award. The Court directed that the arbitral proceedings would recommence before the same Arbitrator who passed the Award which was set aside by the Court. The arbitral record was directed to be returned to ICA with the direction to the ICA to place it before the same Arbitrator who passed the Award which was set aside by the Court.

10. It appears that thereafter the same learned Arbitrator wrote a letter on 24th May 2013 to the ICA stating that he had some health issues as a result

of which he was withdrawing from being an Arbitrator with immediate effect.

11. A perusal of the petition shows that after narrating the above sequence of events, the Petitioner simply states in para 7.30 as under:

“7.30. That, Shri Pratap Khandge, is no longer in position to continue the Arbitral proceedings on account of health grounds so another Sole Arbitrator may be nominated appointed from the list of arbitrator maintained by ICA. The Petitioner has already deposited Arbitration Fee as per the ICA rules applicable at the relevant time.”

12. The present petition was thereafter filed on 21st August 2015 i.e. more than two years after the above intimation was sent by the Arbitrator to the ICA. Today in the course of hearing when learned counsel for the Petitioner was asked why for over two years after he above letter nothing was done by the Petitioner, learned counsel for the Petitioner answered by saying that the Petitioner had approached the ICA which had declined to appoint an Arbitrator to replace the earlier Arbitrator on the ground that the appointment of an Arbitrator on the earlier occasion was by the Court.

13. In the first instance there is no pleading to the above effect. There is also no document on record to show that the ICA was approached by the Petitioner after 24th May 2013 and it declined to appoint an Arbitrator in place of the one who has resigned. In the absence of any pleading to that effect or any document being shown to the Court, it is difficult to proceed on the basis that the Petitioner approached the ICA which declined to appoint an Arbitrator.

14. Learned counsel for the Respondent is right in pointing out that the extraordinary delay in the Petitioner approaching this Court for relief with the present petition has not been satisfactorily explained by the Petitioner.

15. Arbitral proceedings are seen as an alternate dispute resolution mechanism. The entire thrust of the Act is towards expeditious adjudication of issues which otherwise would have been pending in the Courts for several years. Apart from the arbitral proceedings having to be time bound, the interference by the Court at various stages of the arbitration has been minimised. By approaching the Court belatedly without offering any explanation for the delay, and considering that this is a second round of litigation, the Petitioner appears to not be really serious about pursuing its claims. While there is absolutely no explanation for the extraordinary delay in approaching this Court, the petition is also vulnerable to rejection on the ground of laches.

16. With the Petitioner not following the procedure already set out in the arbitration clause, it is not possible for this Court to exercise its powers under Section 11(6) of the Act to appoint an Arbitrator.

17. The petition is dismissed.

S. MURALIDHAR, J

NOVEMBER 03, 2016/dn