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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **O.M.P. 496/2011 & IA 11666/2013**

FOOD CORPORATION OF INDIA ..... Petitioner
Through: Mr. Deepak Dewan, Advocate.

versus

M/S KHOSLA BROTHERS, GURDASPUR(PUNJAB)
& ORS. ..... Respondents
Through: Mr. Ajay Gaind, Advocate.

CORAM: JUSTICE S. MURALIDHAR

<u>O R D E R</u>
% **12.01.2017**

1. Food Corporation of India ('FCI') has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') challenging an Award dated 24th February 2011 passed by the sole Arbitrator in the disputes between FCI on the one hand and the Respondents M/s. Khosla Brothers, Gurdaspur, Punjab on the other arising out of a contract dated 12th October 1994 whereby the premises of the Respondents (hereinafter 'Miller') would be utilised for storage-cum-milling of the paddy into conventional raw/paraboiled rice.

2. The case of the FCI is that under the contract the Miller was supplied 31,728 bags in 20,517-87-000 Qtls. in weight of 'super fine' variety of paddy and 9,930 bags in 6,379-83-000 Qtls. of weight of 'common' variety of paddy. It is not in dispute that the paddy was stored in the 'joint custody' of FCI and the Miller. The storage of the paddy in the premises was without

any claim of charges for such storage or preservation by the Miller.

3. In terms of the contract, the Miller undertook to mill the paddy at the applicable custom milling rate determined by the FCI. This included all services like lifting of paddy from storage points, drying of paddy and Katai of paddy etc. The conversion of paddy to rice was fixed at 68% of common variety and 66½ % of Fine/Super Fine variety. Charges for milling was fixed at Rs. 9 per quintal. The scheduled date of completion of the milling was 28th February 1995. The Miller was to complete delivery of rice within 10 days of issue of paddy to him. He was to ensure the milling and delivery of rice over the months of October/November 1994 up to the end of February 1995 in a graded scale. If the Miller failed or neglected to perform any of his obligations under the contract, FCI could forfeit the security amount of Rs.30,000/- deposited by the Miller after giving him due opportunity. Thereafter FCI could get the work executed at the Miller's risk and cost and adjust either in whole or in part extra expenditure and/or damages suffered by it.

4. The entire quantity was unable to be milled by the Miller up to 28th February 1995. Extension was granted by the FCI up to 31st May 1995 but the milling was unable to be completed even by that date.

5. The case of the FCI is that during the above period, a total of 20517-87-000 Qtls. in 31728 bags of superfine variety and 6379-83-000 Qtls. in 9900 bags of common variety of paddy were stored in the mill premises. Of this, 16750-87-200 Qtls. in 25770 bags of superfine variety and 1780-45-800 Qtls. in 2739 bags of common variety of paddy were issued to the Miller.

The Miller was able to mill up to 31st May 1995 16415-86-200 Qtls. in 25,770 bags of Super Fine Quality rice and 1744-85-100 Qtls. in 2739 bags of common variety of paddy.

6. According to FCI, the record showed a return of 10916-55-000 Qtls. in 11499 bags of Super Fine (Raw) variety and 1186-50-000 Qtls. in 1250 bags of Common (raw) variety of rice as having been received by the FCI up to 31st May 1995 calculating storage loss at the rate of 2% driage on the milled paddy and calculating the cost of the balance paddy at the rate of 1½ times of the economic cost for Super Fine quality and at the rate of Rs.876.21 per quintal for super fine quality and at the rate of Rs.798.12 for common variety. The amounts were calculated at Rs.33,00,681.32 and Rs.36,14,850.78 respectively.

7. FCI claims that after 1st June 1995 the balance paddy was sold and the amount realised was Rs.15,36,427. The balance recoverable from the Miller worked out to Rs.17,64,254.32 for the Super Fine variety and Rs.36,70,850.78 for the common variety.FCI also claimed cost of gunnies retained by the Miller, sales tax, income tax and amounts towards quality cuts.

8. After adjusting the amount payable to the Miller, the net recoverable amount was Rs.54,27,820.34. A notice of demand was sent for the first time to the Miller on 11th July 1995. With no reply coming from the Miller, the FCI referred the matter to the Indian Council of Arbitration ('ICA') with registration fees being paid on 16th December 1997. There was a long time consuming process by the time the learned Arbitrator was appointed to adjudicate the disputes but that is not relevant as far as the present petition is

concerned.

9. In terms of the contract, there were four contingencies under which a Miller was to make good losses that may be incurred in the paddy/rice during transit storage for failure to mill the paddy as agreed under the contract. These were stipulated under Clauses 7, 8 (iii), 9 (i) and 16(c).

10. Under Clause 8 (iii) in the event of shortfall in the recovery of rice, the Miller was to pay the FCI the cost of the paddy equivalent to the shortfall at the rate of 1½ times the economic cost of paddy. Under Clause 9(i) in the event of Miller's failure to supply rice within the prescribed specifications, he shall be liable to pay to the FCI for the quantity of rice short supplied at the penal rate of one and half times, the economic cost of the converted variety of paddy equivalent to the shortages. Further clause 16(c) requires that the Miller shall make good all shortages in paddy, rice and gunny bags that might occur while in his custody till the entire stocks are returned. In the event of the Miller failing to return the said stocks recovery would be made from him for shortages of paddy and rice at 1½ times the economic cost of equivalent paddy/ rice according to the variety involved.

11. The ground situation, however, different. The extension of the period for completion of the milling was extended *suo motu* by the FCI up to 31st May 1995. Under Clause 14 of the contract, the issue in lifting of paddy was limited to the extent of the advance rice delivered by the Miller to the FCI. Supplies of the paddy were to be regulated in accordance with the quantity of rice returned by the Miller. When it transpired that the milling could not be completed within the time stipulated and as the new crop was expected to

come with there not being available the requisite storage space, the FCI decided to sell the remaining un-milled paddy by open sale and the Miller purchased the paddy at offered price. The FCI sent first a letter dated 11th July 1995 to the Miller serving him the final notice to deliver the resultant rice by getting the release order after depositing the cost of the gunnies to be retained by him against delivery of paddy. Another letter was sent on 20th July 1995 asking him to deliver rice Super Fine immediately against balance paddy. By a further letter dated 11th October 1995, FCI informed the Miller that the economic cost of paddy crop for the year 1994-95 had been worked out. In the meantime, the Miller by his letter dated 10th April 1995 informed the FCI that the staff of the FCI had not been accepting the rice on one pretext or the other and had been harassing him.

12. The learned Arbitrator on noting the above conflicting versions of both the FCI and the Miller concluded that both parties were blaming each other for non-execution of the agreement in time. The learned Arbitrator observed as under:

> "Actually it appears that due to paucity of space for new crop the claimants took action to sell the paddy in open market. All the terms and conditions relating to the sale of paddy were conveyed by the Ministry's letter dated 14th March, 1995. Due to this decision, the claimants did not take any action as per terms and conditions of the agreement to get the paddy milled at the cost of the Miller or take any other action by forfeiting the security deposit. As per clause 16 the Sr. Regional Manager reserves the right to terminate the agreement, to withdraw from the contract and to do the recovery for shortages of paddy and rice at 1½ times the economic cost of equivalent paddy/ rice. The claimants did not give any notice also to the respondents regarding any shortfall in the recovery of rice, short supplied

quantity of rice or shortage in paddy etc."

13. Consequently, the learned Arbitrator apportioned the blame for failure to complete the contractual specifications both on the FCI as well as the Miller. It was noted that the FCI had sold the paddy in open market "in their own interest". From the records, the learned Arbitrator was able to ascertain that after March 1995, the FCI decided not to accept rice from the Millers. Further although extension of time was given up to 31st May 1995, no action regarding milling of the paddy was taken by the FCI. A settlement deed was signed in respect of some of the Millers but not in the case of the Respondent herein.

14. In those circumstances, the learned Arbitrator was unable to accept the claim of the FCI as regards economic costs of the unmilled paddy.

15. This rejection of the claim is the main ground of challenge in the present petition. Learned counsel for the Petitioner was unable to demonstrate before the Court that the above finding of fact by the sole Arbitrator was either contrary to the record or to any of the clauses of the agreement.

16. The Court on examination of the aforementioned clauses with the assistance of learned counsel for the parties is unable to be persuaded to hold that any of the grounds under Section 34 of the Act stand attracted. The Sole Arbitrator has in the impugned Award rendered findings of fact which are not shown to be perverse or contrary to the clauses of the contract.

17. The petition is accordingly dismissed but in the circumstances with no order as to costs. The application is disposed of.

S. MURALIDHAR, J

JANUARY 12, 2017
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