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

\+ **FAO(OS)(COMM) 80/2017**

Date of decision: 19th May, 2017

GUJARAT STATE COOPERATIVE MARKETING FEDERATION LIMITED ..... Appellant

Through: Mr. Kuljeet Rawal, Advocate

versus

NATIONAL AGRICULTURE COOPERATIVE MARKETING FEDERATION ..... Respondent

Through: Mr. Aaditya Vijay Kumar with Ms. Liza M Baruah, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE C. HARI SHANKAR

SANJIV KHANNA, J. (ORAL)

The impugned order dated 30.09.2016 dismisses objections under Section 34 of the Arbitration & Conciliation Act, 1996 (Act) challenging the arbitration award dated 15.04.2016 filed by the appellant–Gujarat State Cooperative Marketing Federation Limited.

2. The appellant has raised three contentions. The appellant had procured and supplied cotton seeds to the National Agriculture Cooperative Marketing Federation (NAFED) on or before 06.07.2009 and, therefore, could not have ensured compliance with the Cotton Corporation of India (CCI) norms published subsequently on 28.09.2009. Secondly, the claim of NAFED was barred by limitation.

Lastly, the arbitrator could not have decide the claim/counter claim of NAFED as reference to arbitration under Section 84 of the Multi State Cooperative Societies Act, 2002 was made at the behest and on request of the appellant.

3. We have considered the said contentions, but do not find any merit in the same.

4. The arbitration award dated 15.04.2016 has exhaustively dealt with the contentions and for good and valid reasons, rejected them. The award has been rightly affirmed by the Single Judge. We would briefly elucidate.

5. For the first contention, Clause B-15 is relevant and reads:-

> ***"GINNING & PRESSING WORK FOR PROCURED COTTON:***
>
> *The agent shall ensure that the stocks of raw cotton are processed and pressed in ginning &/or pressing factories available in the vicinity.*
>
> *The agent should make arrangements for receiving of raw cotton at ginning & pressing factories and arrange required labourers at all stages of work beginning from making of heaps of raw cotton up to pressing of bales and storage in the go-downs.*
>
> *The ginning and pressing should be started as early as possible for all the procured stock of raw cotton.*
>
> *The ginning and pressing losses, if any, are allowed only up to less than 3% of the procured raw cotton or as per Cotton Corporation of India (CCI) norms whichever is lower. In this regard, CCI norms for recovery of Seed and Lint shall be followed."*

6. The contract between the appellant and NAFED was signed on 05.01.2009. The appellant was aware and conscious that the CCI norms for recovery of seed and lint would be published and notified subsequently. They had accepted that they would abide by the norms to be fixed, failing which recoveries would be made.

7. The arbitration award in this context records that NAFED is a national level cooperative society, whereas the appellant is a state level cooperative society. The Government of India, Ministry of Textiles, vide Circular dated 24.09.2008 had fixed support purchase price for various types of cotton for Kharif season of 2008-09. For the purpose of implementing the support price scheme, CCI and NAFED were appointed as nodal agencies by the Government of India. The appellant was appointed as a state level agency by NAFED in the state of Gujarat for procurement and processing of cotton by ginning to convert the same into cotton bales during the marketing season of 2008-09. The appellant was conscious and aware of the aforesaid background. The procurement and quality were to be strictly in accordance with the terms of the contract. Payments for the cotton purchased under the support price scheme were to be made by the Central Government to NAFED. The appellant in turn was entitled to 2% of the value of the purchase and other charges as fixed by CCI. Payments by the Central Government were subject to verification by the Chief Adviser Cost, Deptt. of Expenditure, Ministry of Finance. All claims of NAFED were to be duly certified by a Chartered Accountant and were forwarded by the Department of Agriculture to

the office of the Chief Advisor Costs. Clause 14 of the action plan for the procurement of cotton under the price support Scheme for Cotton, 2008 had stipulated:-

> ***"AUDIT SYSTEM :***
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> *Apart from verification and certification of claims under price support scheme by practicing Chartered Accountants, all claims are required to be submitted through Deptt. Of Agri. & Coop., Govt. of India for vetting by office of the Chief Advisor Cost, Deptt. Of Expenditure, Ministry of Finance which should be certified by practicing cost accountants, within the meaning of Cost and Works Accountants Act of India, 1961.*
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> *All the claims and expenses are also subject to spot verification of records by office of the Chief Adviser, Cost, Deptt. Of Expenditure, Ministry of Finance, New Delhi and in case of disallowance of any expenses by Ministry of Finance the same shall be debited to the concerned SLAs/societies/union."*

As per the CCI Norms, the percentage on the basis of procurement of lint for the crop year 2008-09 in the Gujarat region was fixed for 33.27%. There was under recovery of lint to the extent of 0.57% on procurement made through the appellant. This is undisputed. The under recovery and the claim by the Government of India was communicated to NAFED who in turn had written the letter dated 05.09.2012 to the appellant. This letter records that recovery of the amount was sought on account of recommendation by the Comptroller & Auditor General of India. Discussions followed and accounts between the Government of India and NAFED were settled with the letter dated 23.10.2013 written by the Government of India to NAFED. Subsequently, vide letter dated 20.01.2014, NAFED had made claim of Rs. 175.83 lacs from the appellant, on the basis of settlement of account by the Government of India. It is undisputed that the Government of India had settled the amount of NAFED as per the recommendations of the auditors from the office of Comptroller and Auditor General of India for the aforesaid sum. The appellant, it is also accepted had furnished an undertaking dated 10.10.2009 to the NAFED that they would reimburse financial loss incurred by NAFED due to observations made by the Auditors.

11. In these circumstances, after referring to the different clauses of the contract including the undertaking and the scheme, the Arbitrator has concluded and opined that the under recovery of lint had to be recovered and reimbursed by the appellant.

12. The learned Single Judge has refused to set aside and quash the said finding for detailed reasons which are similar to the reasons noted above. In addition, learned Single Judge has held that questions as to interpretation of the agreement fall within the domain and jurisdiction of the Arbitrator and the interpretation as given was plausible and should not reversed. Reference has been made to decisions ***in Mcdermott International Inc. Vs. Burn Standard Co. Ltd and Others, (2006) 11, SCC 181, Steel Authority of India Ltd. Vs. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63, Sumitomo Heavy Industries Limited Vs. Oil and Natural Gas Commission of India, (2010) 11 SCC 296 & Rashtriya Ispat Nigam ltd. Vs. Dewan Chand Ram Saran, (2012) 5 SCC 306.*** We concur with the reasoning given by the learned Single Judge on the said aspect.

13. With regard to the question of limitation, again, we agree with the findings of the Single Judge. The period of limitation as per the Multi State Cooperative Societies Act, 2002 is six years. The Single judge has held that the arbitrator may have erroneously taken the date of commencement as 22.8.2014 but this would not matter. The period of limitation would commence not on the date of supply of goods, but when NAFED's claim was rejected by the Government of India. Only then could NAFED have called upon the appellant for payment or reimbursement. The undisputed position was that the Government of India had finally rejected NAFED's claim sometime in 2013 and only then the limitation commenced.

14. On the question of reference, we concur with the findings of the Single Judge that NAFED was equally entitled to raise their claim or counter claim before the arbitrator. The claim of NAFED with regard to under recovery was a subject matter of legal proceedings before the Gujarat High Court and communications exchanged. Reimbursement claimed by NAFED from the appellant was linked and connected with the claim of the appellant for balance payment. The appellant had challenged the demand raised by NAFED against them. In the aforesaid background, we have to interpret the order of the Registrar dated 31.12.2015 of appointment of the sole Arbitrator. The appointment was made in exercise of powers under Section 84(4) of the Multi-State Cooperative Societies Act, 2002 "to settle the dispute between Gujarat State Cooperative Marketing Federation of India Ltd. vs. National Federation of India Ltd. as per the provisions of the Arbitration & Conciliation Act,1996…" . The "dispute" in view of the

history, nature, and contours of the claim and contentions involved the question of reimbursement of Rs.175.83 on account of under recovery as claimed by NAFED.

15. As we find there is no merit in the appeal, we are not inclined to issue notice on the application for condonation of delay of 87 days in preferring the appeal. Consequently, the application for condonation of delay would be treated as dismissed. In the facts of the case, there would be no order as to costs.

SANJIV KHANNA, J

C. HARI SHANKAR, J

MAY 19, 2017/
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