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IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P. 538/2007

**NATIONAL COOPERATIVE CONSUMERS
FEDERATION OF INDIA LTD**

.... Petitioner

Through: Ms. Anju Bhattacharya with Mr. Elgin
Matt John, Advocates.

versus

P.K.S. LIMITED & ANR

..... Respondents

Through: Mr. Ujjawal Kumar Jha, Advocate.

And

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OMP 551/2007 & IA 11720/2007

P.K.S. LIMITED

.... Petitioner

Through: Mr. Ujjawal Kumar Jha, Advocate.

Versus

**NATIONAL COOPERATIVE CONSUMERS
FEDERATION OF INDIA LTD**

....Respondent

Through: Ms. Anju Bhattacharya with Mr. Elgin
Matt John, Advocates.

CORAM: JUSTICE S.MURALIDHAR

ORDER

08.03.2017

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1. The challenge in these two petitions is to an impugned Award dated 27th June, 2007 passed by the learned sole Arbitrator in the dispute between the National Cooperative Consumers Federation of India Limited ('NCCF') and

P.K.S. Limited ('PKS') arising out of the contract for the supply of 3319 MT of par-boiled rice at Darshana (Indo-Bangladesh Border).

2. NCCF had floated quotations for the above supply as per the requirement of the World Food Programme ('WFP'). PKF quoted a rate of US\$ 168 per MT. Although this was the lowest offer, after negotiations, a rate of US\$ 164 per MT was finalized. NCCF added to this rate a further margin @ US\$ 3.30 per MT and quoted to WFP a rate of US\$ 167.30 per MT for delivery at Darshana.

3. The short controversy in these cases is whether the above rate quoted by PKS was inclusive of freight charges? As it turns out, the freight charges were initially reimbursed by FCI to NCCF. In turn PKS sought to reimbursement of the freight charges from NCCF. Initially NCCF did reimburse the freight charges. Later it realised that it was not obliged to do so and this led to NCCF filing a claim before the learned Arbitrator seeking to recover the amount wrongly paid to PKS.

4. PKS filed its statement of defence and also a counter-claim in the sum of Rs. 17,75,088 relying on two letters dated 26th July, 2002 and 23rd August, 2002. According to PKS, NCCF had wrongly retained part of the sale proceeds for the above sum.

5. Initially, an Award was made against NCCF and in favour of PKS, which was challenged. While setting aside the said Award, this Court permitted the parties to lead additional evidence.

6. In the impugned Award, the learned Arbitrator after going through the correspondence and other evidence came to the conclusion that there was nothing to indicate the rate quoted by PKS was not inclusive of the freight charges. The entire claim of Rs. 27,07,116 by NCCF inadvertently released to PKS towards reimbursement of freight charges was thus allowed. As regards the counter-claim, the learned Arbitrator referred to the communication dated 23rd September, 2003 by the Branch Manager of NCCF followed by another communication dated 12th May, 2004 by the Branch Manager where it was acknowledged that a sum of Rs. 14,85,501 was payable to PKS. According to the learned Arbitrator, the record itself showed that the counter-claim in the sum of Rs. 17,75,088 should be allowed *in toto*. After adjusting the above amount against the claim amount, it was held that NCCF would be entitled to Rs. 9,32,028. The said amount was awarded together with interest @ 12% per annum post Award.

7. NCCF is thus aggrieved to the extent that its claim has not been allowed in full and to the extent that the counter-claim of PKS has been allowed. On its part, PKS is aggrieved that the claim of NCCF has been allowed.

8. Having heard learned counsel for the parties and having perused the impugned Award and the other documents placed on record, the Court is of the view that the conclusion of the learned Arbitrator regarding the rate quoted by PKS for delivery of the aforementioned consignment of par-boiled rice at Darshana (Indo-Bangladesh Border) including the freight charges cannot be faulted. The learned Arbitrator correctly interpreted the contract dated 3rd August, 2001 and in particular the clauses concerning the

delivery of the rice.

9. There is nothing in the contract which even remotely indicates that freight charges had to be separately reimbursed to PKS. As explained by the Supreme Court in *National Highways Authority of India v. ITD Cementation India Limited (2015) 14 SCC 21*, the interpretation of the clauses of the contract by the AT should be taken to be final unless it is so perverse so as to shock the judicial conscience. The interpretation placed on the clauses by the Arbitrator in the impugned Award certainly cannot be said to be perverse. Consequently, the Court declines to interfere with the impugned Award to the extent it has allowed the claim of NCCF in the sum of Rs. 27,07,116 together the future interest @ 12% per annum

10. As far as PKS's counter-claim is concerned, the two letters dated 23rd September, 2003 and 12th May, 2004 by the Branch Manager of NCCF referred to by the learned Arbitrator only show that a sum of Rs. 14,85,501 is admitted by NCCF as being payable to PKS. Even learned counsel for PKS was unable to explain how, on the basis of the above letters, the learned Arbitrator could have allowed the entire counter-claim in the sum of Rs. 17,75,088.

11. Learned counsel for PKS referred to the letters dated 26th July, 2002 and 23rd August, 2002 and an affidavit filed in this Court by PKS offering an explanation for the counter-claims. However, the Court finds that there is no discussion whatsoever in the impugned Award of the said letters or for that matter any evidence other than the two letters dated 23rd September, 2003 and 12th May, 2004 to justify the allowing of the entire counter-claim.

Consequently, the Award to the extent it allows the counter-claim of PKS beyond the sum of Rs. 14,85,501 is unsupported by any evidence and is also unreasoned and, therefore, cannot be sustained.

12. The Court accordingly sets aside the impugned Award to the extent it allows the counter-claim of PKS beyond the sum of Rs. 14,85,501. In other words, it is held that PKS is not entitled to an amount beyond Rs.14,85,501.

13. It is pointed out that a sum of Rs. 9,32,028 has already been deposited by PKS in this Court. The said amount together with interest accrued thereon be released straightway to NCCF by the Registry through an authorised representative after proper identification and obtaining an acknowledgement. PKS will now pay NCCF the differential sum i.e. Rs. 27,07,116 minus Rs. 14,85,501 minus Rs. 9,32,028 together with interest @ 12% per annum from the date of the Award till the date of payment.

14. The petitions and the pending application are disposed in the above terms. Order be given *dasti*.



S.MURALIDHAR, J

MARCH 08, 2017

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