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

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Judgment delivered on: 01.09.2017

+ OMP (COMM.) 328/2017

**NATIONAL AGRICULTURAL COOPERATIVE MARKETING
FEDERATION OF INDIA LTD(NAFED) Petitioner**

versus

NATIONAL SPOT EXCHANGE LIMITED Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Prashanto Sen, Sr. Advocate with Mr. Aaditya Vijay Kumar
Adv. and Mr. Anurag Tiwari, Law Officer of the Petitioner
For the Respondent: Mr. Rakesh Munjal, Sr. Advocate with Mr. Ranjan Kumar Pandey,
Mr. Sandeep Bisht and Mr. Rahul Kumar, Advs.

**CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT
01.09.2017**

SANJEEV SACHDEVA, J. (ORAL)

IA 10018/2017 (Exemption)

Exemption allowed, subject to just exceptions.

OMP (COMM.) 328/2017 and IA 10017/2017 (Stay)

1. The petitioner by this petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) impugns the Award dated 01st May, 2017.

2. By the impugned Award dated 1st May, 2017, the Arbitrator has awarded as under :

“85. In view of the conclusions arrived at by the Tribunal in the foregoing paragraphs the Tribunal proceeds to pass an award in favour of the Claimant holding the Claimant entitled to recover from the Respondent the following Amounts:

- (a) For Season 2008-2009 under the Agreement dated 30.12.2008, a sum of Rs. 3,95,14,350 {Rupees Three crores, ninety fifty lacs, fourteen thousand, three hundred and fifty only) along with interest payable by the Respondent inclusive of a simple interest at the rate of 12% per annum from the date of occurrence i.e. 02.09.2014 to the date of award which works out too Rs.5,21,28,629 { Rupees five crores, twenty one lacs , twenty eight thousand, six hundred and twenty nine only).*
- (b) For Season 2012-2013 under the Agreement dated 10.11.2012, a sum of Rs. 64,10,38,755 (Rupees Sixty four crores, ten lacs, thirty eight thousand , seven hundred and fifty five only) along with interest payable by the Respondent inclusive of a simple interest at the rate of 12 % per annum from the date of occurrence i.e. 22.09.2014 to the date of award which works out too Rs.84,14,64,351 (Rupees Eighty four crores, fourteen lacs, sixty four thousand, three hundred and fifty one only).*
- (c) Rs. 25,00,000 (Rupees twenty five lacs) towards cost of arbitration*
- (d) Future interest at the rate of 14% on the awarded amounts for both seasons (inclusive of Interest as on date of award) from the date of award till the date of actual payments shall be payable to the*

Claimant in case payment of the awarded amounts including interest is not made within four months from the date of award.”

3. By an agreement dated 30th December, 2008, entered into between the petitioner and respondent, the respondent was appointed as a State Level Agency (SLA) in the State of Andhra Pradesh, for the season 2008-09, for the purposes of procurement of cotton and processing of cotton by ginning and pressing to convert it into cotton bales. Another agreement was entered into between the petitioner and respondent for the season 2012-13.

4. In terms of the agreements between the parties, respondent was to procure cotton from farmers, process the same by ginning and pressing, convert it into cotton bales and supply the same to the petitioner. The petitioner was, thereafter, to dispose of the cotton and receive the sale proceeds.

5. There were two components of payments that the petitioner was to make to the respondent. First of all, payment was to be made for the price payable to the farmers from who the respondent was to procure the cotton. The second component of payment to the respondent was towards the service charges and expenditure incurred in the processing of the cotton and converting it into bales.

6. As per the respondent, the petitioner failed to make part of the payment for the years 2008-09 and 2012-13, leading to the respondent

invoking arbitration and filing the claims.

7. For the year 2008-09, respondent made a claim of Rs.8,50,41,900/- and for the year 2012-13, respondent made a claim of Rs.94,34,15,378/- besides interest due thereon.

8. The contention of the claimant/ respondent was that the petitioner had admitted that the said amount was due and payable. The respondent relied on acknowledgments made by the petitioner for the said amounts.

9. The contention of the petitioner before the Arbitral Tribunal was that the petitioner had made the payment directly to the farmers, both for the years 2008-09 and 2012-13 and the only issue was with regard to the payments to be made to the respondent / claimant for the service charges as well as cost incurred for processing of the cotton.

10. It was contended that the payment was to be released to the respondent only after the same was vetted and audited by the Chief Advisor Cost, Department of Agriculture and Cooperative, Ministry of Agriculture, Government of India (hereinafter referred to as the CAC), who was thereafter to forward the same to the Ministry of Finance for the dispersal of funds to NAFED / petitioner for onward payment to the respondents.

11. It was contended that the payment could only be released after the same was vetted and audited by the CAC and funds released by

Ministry of Finance.

12. It is contended that in so far as, claim made by the respondent for the year 2012-13 is concerned, the same has been forwarded to CAC for auditing and vetting and the final approval of the claim is pending.

13. Further case of the petitioner was that the respondent has not been able to prove its claim for the said amount of Rs.94.34 crores.

14. The contention of the respondent/claimant was that the claim of the respondent had only to be forwarded to the CAC for the purposes of vetting and the payments were not dependent upon CAC approving the same. It was further contended that as against the claim of Rs.93.33 crores to the respondent, the petitioner had acknowledgment and agreed to pay a sum of Rs.64,10,38,755/-.

15. It was contended that in view of the unequivocal admission by the petitioner of the said amount, there was no question of it being deferred or to await any clearance or approval by the CAC or the Ministry of Finance. It is contended that the petitioner has unconditionally acknowledged that the said amount was due and payable.

16. The Arbitral Tribunal, after examining the entire evidence led by the parties as well as the agreements, came to a conclusion that the audit provisions forming part of the Action Plan did not indicate that

payments could not be made till vetting process was completed. With regard to the claim for the season 2008-09 is concerned, the Arbitrator has held that there is no ground for the petitioner to withhold the payment for a sum of Rs.3.95 crores. The Arbitrator came to a conclusion that the petitioner after reconciliation of it's account had confirmed and accepted that an amount of Rs.3,95,14,350/- was due and payable.

17. The Arbitrator though held that the respondent / claimant had failed to substantiate its claims for Rs.8.50 crores, however, in view of the unequivocal admission of the petitioner contained in various documents as well as the admissions made at the time of the cross-examination of the witness that CAC in January, 2014 had also cleared the amount of Rs.3,95,14,350/-, the Arbitrator held that the said amount was payable.

18. With regard to the claim for the year 2012-13, the Arbitrator after examining the documents and evidence, came to the conclusion that the respondent / claimant had failed to substantiate its claim for the amount of Rs.94,34,15,378/- but relied on the admission of the petitioner as contained in letter dated 22.09.2014, whereby an acknowledgment was made that a sum of Rs.64,10,38,755/- was the amount payable to the respondent / claimant.

19. The letter dated 22.09.2014 was signed by the Branch Manager who is also the authorised signatory on the agreement between the

parties.

20. There is no gainsaying that the arbitral tribunal is the master of the factual arena and has the right to even go wrong while deciding the factual issues, unless there is something manifest from the face of the award that is so grave as to move the conscience of the court that the error would result in a monumental miscarriage of justice.¹

21. Where the Arbitral Tribunal has assessed the material and evidence placed before it in detail, the court while considering the objections under Section 34 of the said Act does not sit as a court of appeal and is not expected to re-appreciate the entire evidence and reassess the case of the parties. The jurisdiction under section 34 is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is possible. The duty of the court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the facts, pleadings and evidence before the Arbitrator. Even if on the assessment of material, the court while considering the objections under section 34 is of the view that there are two views possible and the Arbitral Tribunal has taken one of the possible views which could have been taken on the material before it, the court would be reluctant to interfere. The court is not to substitute its view with the view of the Arbitrator if the view taken by the

Arbitrator is reasonable and plausible.²

22. The arbitrator's decision is generally considered binding between the parties and therefore, the power of the court to set aside the award would be exercised only in cases where the court finds that the arbitral award is on the fact of it erroneous or patently illegal or in contravention of the provisions of the Act. It is a well-settled proposition that the court shall not ordinarily substitute its interpretation for that of the arbitrator. The arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.³

23. It is in view of the above legal position, it is to be examined whether the award of the Arbitrator warrants any interference in exercise of powers under section 34 of the Act.

24. With regard to the contention of the petitioner that there was an Audit requirement prior to disbursal of funds, the relevant clauses of the agreement may be referred to. The Clause with regard to the Audit, as contained in the agreement reads as under:

“AUDIT SYSTEM

*Nafed shall submit the claim for handling of PSS
operation to Ministry of Agriculture, Deptt. Of*

¹ *Food Corporation of India v. Shanti Cereals Pvt. Ltd.*, 2010 (3) ARB. LR 296 (Del.) (DB)

² *Jhang Cooperative Group Housing Society v. P.T Munshi Ram & Associates Private limited:* 202(2013) DLT 218.

³ *Swan Gold Mining Ltd. v. Hindustan Copper Ltd.*, (2015) 5 SCC 739

Agriculture & Cooperation, Govt. of India after liquidation of the entire stock, duly certified by Chartered Accountants. Ministry of Agriculture, Deptt. Of Agriculture & Cooperation, Govt. of India will forward the claim of NAFED to Ministry of Finance, Deptt. Of Expenditure, Office of The Chief Advisor (Cost) (for vetting).

All the claims and expenses are subject to spot verification of records by Ministry of Finance, Deptt. of Expenditure, office of The Chief Advisor (Cost), New Delhi . In case of disallowance of any expenses by them, the same shall be debited to the concerned State Level Supporter/society.”

25. The Arbitrator with regard to the Audit requirement has held as under :

“50. As the Respondent has relied upon the conduct of the Claimant for season 2008-2009 to state that CAC audit is required prior to release of payment even for the season 2012-2013, the issue of Audit System is decided jointly for both the seasons. It is clear that provisions of both the Agreements are similar in regard to Audit as also those relating to procurement and reimbursement. The audit clauses in both the Agreements including Clause 20(d) 16 in the Agreement dated 10.11.2012 do not indicate that procedure of vetting or audit by CAC is a precondition for the release of payments to the SLS/ Agent. The Action plans essentially provide that after verification and certification of claims under PSS by Chartered Accountants, all claims are to be submitted to CAC subsequently by NAFED. The representative of the Respondent has undertaken spot verification from time to time also. Agreements also provide that any disallowance of claims shall be debited to the account of

concerned SLS/ Agent. The conduct of the Respondent clearly establishes that substantial payments have been released to the Claimant prior to CAC vetting .

51. In the arguments and submissions before the Tribunal, Respondent has argued that by their conduct for the procurement year 2008-2009, the Claimant cannot dispute that the monies are payable only after determination by the CAC in terms of the letter dated 11.11.2014. As per the Respondent this aspect assumes importance in the context of the Season 2012-2013 where CAC has not yet determined the amount.

52. However this argument of the Respondent must be viewed in light of its own conduct as indicated by its letter dated 02.09.2014 at page 83 of SOC relating to season 2008-2009. From this document it becomes apparent that an amount of Rs. 2,19,59,89,986.50 was released by the Respondent without determination by the CAC over a period of time till 12.11.2012 since the first bill of the season 2008-2009 was sent by NSEL to NAFED.

53. The CAC report for season 2008-2009, which was made available in January 2014 to the Respondent and to the Claimant in November 2014, is more in the nature of general observations/recommendations on the procurement procedures under the PSS. The extract of CAC report attached to the letter sent to the Claimant nowhere mentions the amount of Rs. 3.95 crores which is only stated in the covering letter attaching the said extract. Therefore, these extracts of the CAC report are irrelevant to the case. During the cross examination of the witness of the Respondent, in response to Question no. 13 & 18, the Respondent's witness accepted that there is no specific clause which empowers NAFED to withhold payment to NSEL and therefore an amount of

Rs. 3.95 Crores is Payable to the Claimant.

54. Further the conduct of the parties in relation to the season 2012-2013 also indicates that interim and adhoc payments were made by NAFED without prior determination by the CAC. Respondent acknowledged that part payment of Rs. 604.11 crores as against Rs. 697.77 crores had been made and remaining part of Rs. 93.66 crores was pending for settlement vide letter dated 27.09.2013 (Annexure I at page 82 of SOC).

55. In view of the above, I am in agreement with the arguments of the Claimant and am of the opinion that the Audit provisions forming part of the Action Plan do not indicate that payments were not to be made till the vetting process was completed and this is substantiated by the conduct of the Respondent which has for both seasons released almost the entire sums of monies payable on the basis of the bills submitted by the Claimant. As indicated above no CAC vetting/ approvals were taken for releasing these monies. I am in agreement with the Claimant that all terms in the Agreements and the Action Plans are to be read together to ascertain the pith and substance of the intention and not in an isolated manner.”

26. The Audit System as stipulated by the agreement does not contemplate that the payment is not to be made to the respondent till the Audit is completed. The Arbitral Tribunal has also interpreted the said clause in the light of the fact that admittedly the petitioner has cleared payments without waiting for the approval of CAC. The contention of the petitioner that payments were released only to the farmers and no payment was released to the respondents. The Audit

System as contemplated by the agreement does not make such a bifurcation. It does not stipulate that payment to be made to the farmers would be treated any different from the payment to be made to the respondent.

27. The Arbitral Tribunal, after examining the various Clauses between the parties as well as the evidence led by the parties and the admissions made in cross examination has taken a view that Audit requirement is not of pre condition for release of payment to the respondent. The view taken by the Arbitrator is a plausible view and in view of the law as referred to above, this Court, even if it were to disagree with the view taken by the Arbitrator would not be called upon to substitute its view for the same. The Arbitrator has interpreted the Clause of the agreement in the light of facts that have been proved before the Arbitral Tribunal. In my opinion, the said view does not call for any interference.

28. The Arbitrator has disallowed part of the claim for the season 2008-09 in the sum of Rs. 8,50,41,900/-, besides interest due thereon. The Arbitrator has rejected part of the claim on the ground that the respondent has not been able to substantiate the same.

29. The Arbitrator has allowed the claim of the respondent/claimant for the sum of Rs.3,95,14,350/- *inter alia* on the basis of an admission by the petitioner by its letter dated 02.09.2014, wherein the petitioner had categorically stated that as per their books, the said amount is

payable against the purchase of cotton under the Price Support Scheme Cotton 2008. The petitioner has further admitted that the said amount of Rs.3.95 crores has been accepted by the CAC to be due and payable. The Arbitrator has also referred to the cross-examination of the witness of the petitioner, wherein the witness has categorically admitted that the said amount of Rs.3.95 crores has been determined to be payable by NAFED to the respondent / claimant.

30. The admission made in the letter dated 02.09.2014 is as under :

As per our books Rs3,95,14,350.00 is payable purchase of PSS Cotton 2008. A statement is enclosed for your information please.

31. Even today, it is not disputed that the said amount of Rs.3.95 crores is due and payable to the respondent for the year 2008-09. It is also admitted by the petitioner that the said amount has been received by the petitioner from the Government and the petitioner has not paid the said amount. The challenge to the Award with regard to the claim for the year 2008-09 is clearly not sustainable.

32. With regard to the claim for the year 2012-13, the contention of the petitioner is that the petitioner could not make the payment to the respondent as the petitioner had to await the Audit by the CAC. As stated above, the Arbitrator while interpreting the Audit Clause has opined that the clause does not stipulate that the payment to the

respondent has to await the Audit clearance from the Government. The contention of the petitioner that the payment is to await the clearance of the Auditor of the CAC has not been found to be sustainable.

33. The Arbitrator with regard to the claim for the season 2012-13 has once again rejected part of the claim of the respondent/claimant. The respondent had claimed an amount of Rs.94,34,378/-. The Arbitrator has come to a conclusion that respondent / claimant has not been able to substantiate the entire claim by producing cogent evidence. The respondent has not impugned this finding of the Arbitrator.

34. The Arbitrator, however, has found that the respondent / claimant is entitled to an amount of Rs.68,37,03,859/-. From the said amount, Arbitrator, has allowed a deduction of an amount of Rs.4,26,65,104/- as recoverable against seed sales. The Arbitrator has thus awarded a sum of Rs.64,10,38,755/- in respect of the said claim.

35. The Arbitrator while examining the claim for the season 2012-2013 has relied on an admission of the petitioner contained in its letter dated 22.09.2014.

36. The said letter of 22nd September, 2014 reads as under :

“Sub: Settlement of expenses against purchase of Cotton under PSS during 2012-13

Dear Sir,

This is with reference to various communications regarding settlement of expenses and account against purchase of Cotton under PSS during the year 2012-13. As per document made available by NSEL and as per terms of the agreement we have settled your claim as per detailed statement enclosed herewith and accordingly, Rs. 68,37,03,859.00 stands payable to NSEL. Besides above Rs. 4,26,65,104.00 stands receivable from parties against seed sales. Thus net amount payable comes to Rs. 64,10,38,755.00.

This is for your kind information and necessary adjustment at your end please.”

37. Perusal of the letter dated 22.09.2014 shows that the said letter is an unconditional and unequivocal admission on part of the petitioner. In the said letter, the petitioner has categorically stated that the claim of the respondent has been settled as per the detailed statement enclosed and accordingly Rs.68,37,03,859/- stands payable to the respondent. Besides Rs.4,26,65,104/- which is recoverable. The letter also acknowledges that the net amount payable comes to Rs.64,10,38,755/-. The said letter refers to a detailed statement.

38. The detailed statement annexed to letter dated 22.09.2014 has not been filed by the petitioner, but a copy of the same has been produced by the Respondent. The said statement gives details of all the deductions and adjustments made by the petitioner from the claim of the respondent. The statement shows that the amount claimed by the

respondent was Rs.93,48,03,348/- out of which deductions are shown to have been made by the petitioner and after adjusting and deducting the recoverable, the amount of Rs.68,37,03,859/- is stated to be the amount allowed by NAFED towards claim of the respondent.

39. The letter dated 22.09.2014, constituting an unconditional acknowledgment, has been duly proved by the respondent before the Arbitral Tribunal. Based on the said letter and unconditional acknowledgment, the Arbitrator has awarded the claim in the sum of Rs.64,10,38,755/- for the season 2012-13. The witness of the petitioner before the Arbitrator has acknowledged and admitted the said letter and above referred amount was admitted by the petitioner NAFED to be due and payable.

40. The only reason, for not paying this amount to the respondent, is stated to be that the petitioner is awaiting the Audit clearance from the CAC. The said reason has been held by the Arbitrator not to be a pre condition for making payment to the respondent.

41. As noticed, hereinabove, the Arbitrator has taken view that is a plausible view of the matter and has arrived at the conclusion that the petitioner is liable to pay the said awarded amount to the respondents.

42. In my view, the findings returned by the Arbitrator do not suffer from any infirmity warranting any interference under Section 34 of the Act. The objection raised by the petitioner to the Award of claim

with regard to the season 2008-09 and 2012-13 is accordingly not sustainable and is rejected.

43. With regard to the component of interest, the Arbitrator has relied on a report of the CAC filed by the petitioner themselves which mentions the rate of interest as 12%. Accordingly, the Arbitrator has awarded pendent lite interest @12% per annum. In my view, even this computation of interest does not call for any interference.

44. With regard to the objection of the petitioner to the award of costs, it may be seen that the Arbitrator has awarded costs in the sum of Rs.25 lakhs. Learned counsel for the parties submits that approximately Rs.7 lakhs per party has been paid as Arbitrator Fees. Keeping in view the fee paid to the arbitrator and the expenses incurred by the Respondent/claimant towards legal fee etc. the costs as awarded to the respondent/claimant is reduced to Rs.10 lakhs.

45. In view of the above, I find no merit in the petition, the petition is accordingly dismissed. However the award of costs by arbitrator shall stand reduced as above.

SANJEEV SACHDEVA, J

SEPTEMBER 01, 2017

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