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

Date of Decision: 22nd October, 2018

\+ **O.M.P. 346/2012**

FOOD CORPORATION OF INDIA, FEROZEPUR ..... Petitioner

Through: Mr. Mohan Lal Sharma, Advocate. (M:9811537909)

versus

M/S SHIV SHANKER RICE MILLS AND PARTNERS FEROZEPUR AND ORS. ..... Respondents

Through: Mr. Rajesh Chhetri, Mr. Rajeev Chhetri, Mr. Pawan Upadhyay and Ms. Meenakshi Rawat, Advocate. (M:9891675255)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*'the Act'*) has been filed challenging award dated 15th November, 2011 passed by the learned Sole Arbitrator under the aegis of the Indian Council of Arbitration.

2. The disputes arose out of agreement dated 26th April, 1995 which was entered into between the Petitioner and the Respondents. The same relates to milling of paddy, which was to be done by the Respondents. The Food Corporation of India (*hereinafter, 'FCI'*) had invoked arbitration and raised claims against the Respondents. The impugned award was then passed. Operative portion of the award is set out herein below:

> "*12. On these facts and in the circumstances of the case and in the light of arguments of the learned counsels the claim of Rs.80,95.449.73p., as per the claim application, is justified which is rounded to 80,95,000. The respondents are directed to pay this*

amount in one or more instalments within a period of 6 months from the date of this order.

13. As regards the interest claimed at 18 percent per annum, the learned counsel for the respondents disputed it vehemently and argued that the delay in finalization of the arbitral proceedings is mainly on account of the dispute between the Claimant and the ICA for which the respondents cannot be held responsible and be asked to pay interest at such exorbitant rate. He pointed out that the sale of paddy took place in 1995, but arbitration proceedings are being taken up now because of the delays caused by aforesaid dispute between the Claimant and the ICA, therefore, the respondents should not be asked to pay interest. This argument of Shri Maggo is well founded. The delay in arbitral proceedings took place because of the said litigation for which only the claimant was responsible. Moreover, in response to my quarry, it was fairly admitted by learned counsel for the Claimant that such interest is not shown as outstanding against the respondents in the books of account of the Claimant. The claim of interest from 1995 till the date of realization of the amount from the respondents is an afterthought, therefore, not sustainable. The learned counsel for the Claimant, however, argued that the respondents are solely responsible for the delay in finalization of these proceedings after the issue of the first notice in this case by delaying the proceedings on filmsy grounds, therefore, they should pay interest at least for this period. I am unable to accept this argument as well, because, the proceedings are being finalized within 10 months, which is almost reasonable. Earlier adjournments had been allowed for reasonable cause. Accordingly, no interest is payable by the respondents as asked for by the Claimant. However, if the respondents do not pay the amount due from them to the Claimant within the aforesaid period of 6 months from the date of

> *this order, they would render themselves liable to interest on the amount outstanding after the date of this order at 15 percent-the prevailing market rate of interest as of now.* "

3. The objections by FCI are limited to the interest component in the award. The claim of FCI was for interest @18%. However, the learned Arbitrator has held that claim of interest from 1995 till the date of realisation of the amount is an afterthought and hence is not sustainable. However, learned Arbitrator has directed that if the amount due, as per the award, is not paid within a period of six months from the date of the award, interest would be payable @ 15% per annum.

4. It appears that there was an enormous delay in the invocation of the arbitration, filing of the claim and the adjournments were also sought in the arbitration proceedings. Learned Arbitrator has held that the Respondents cannot be blamed for the delay in the same and hence FCI is not entitled for the interest. This is a reasonable view and does not suffer from any patent illegality in the facts and circumstances of the case. Accordingly, the claim of interest is not liable to be allowed.

5. Ld. counsel for the Respondents submits that the Respondents have filed a section 34 petition challenging the award of Rs.80,95,000/- and the same is pending in a separate petition. If the same has been filed, dismissal of the present OMP would not come in the way of the said petition being heard on merits. The said Petition shall be decided in accordance with law.

6. OMP is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

OCTOBER 22, 2018/*dk*