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

Date of Decision: 23rd October, 2018

\+ **O.M.P. 344/2012**

FOOD CORPORATION OF INDIA,
GURDASPUR (PUNJAB) ..... Petitioner

Through: Mr. Deepak Dewan, Advocate.

versus

M/S GURU NANAK MILLS & ITS PARTNERS, DHARIWAL
GURDASPUR(PUNJAB) ..... Respondent

Through: Mr. Amresh Anand, Advocate (M-9582539593).

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award dated 14th December, 2011 passed by the learned sole arbitrator under the aegis of the Indian Council of Arbitration.

2. An agreement was entered into for storage and milling of paddy into rice on 15th October, 1994 between M/s. Guru Nanak Mills & Its Partners (*hereinafter, 'millers'*) with the Food Corporation of India (*hereinafter, 'FCI'*). Under the said agreement, the miller was to mill the paddy and supply back superfine variety rice and common variety rice to the FCI. The admitted position is that out of the total paddy supplied to the miller, of 17310 bags (11215-62-400 quintals) of superfine variety and 38960 bags (25276-85-000) of the common variety, the rice received was only an equivalent of 7726 bags (7308 74-500 quintals) of superfine variety and 11405 bags (10764-15-500) of the common variety upto 31st May, 1995. The balance of 1331 bags (864-24-600 quintals) of superfine variety and 14037 bags (9123-73-200 quintals) of common variety containing was not

milled and was also not found in the premises of the Miller. Accordingly, disputes had arisen between the parties.

3. The FCI had given a sale notice for open sale @ Rs.442/- per quintal for superfine variety and Rs.402/- per quintal for common variety in 1995. The miller, on the other hand, offered Rs.380/- and Rs.350/- respectively for the superfine variety and the common variety paddy. However, the FCI could not take custody of the paddy as the miller had removed the same. Thus, the FCI raised a claim against the miller as the paddy could not be retrieved from the miller's premises.

4. In view of the fact that the unmilled paddy could not be retrieved at all, the arbitrator has, awarded a sum of Rs.40,49,737/- as the value of the balance quantity of paddy calculated at Rs.442/- and 402/- respectively for superfine and common variety paddy, which was the open market price advertised by the FCI. Thus, the arbitrator, instead of awarding 1½ times the economic cost paddy of as per the agreement, has gone by the open market price and directed that the miller would be liable to pay as per the open market price, which FCI would have recovered if they had sold the paddy in the open market.

5. A perusal of the award shows that the arbitrator has, in a reasoned manner, given the basis for calculating the cost of the paddy which the FCI could not retrieve from the miller. The said amount awarded by the arbitrator does not warrant any interference as the arbitrator has merely followed the sale price which the FCI itself had advertised for open sale.

6. However, insofar as costs are concerned, since the miller did not deposit the costs of the ICA, the FCI had to deposit the entire costs i.e., even the share of the miller's costs. Thus, a sum of Rs.1,50,500/- is recoverable

by the FCI in addition to the awarded amounts.

7. Insofar as the counter-claim amount of Rs.30,000/- is concerned, there is no reasoning given whatsoever by the Arbitrator to award the said amount. The same is, accordingly, set aside.

8. The OMP is, accordingly, disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

OCTOBER 23, 2018/'AA'