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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 23rd October, 2018
+ **O.M.P. 487/2011**
FOOD CORPORATION OF INDIA Petitioner
Through: Mr. Deepak Dewan, Advocate.
versus

M/S S.K. INTERNATIONAL RICE MILLS,
GURDASPUR Respondent
Through: Mr. Ajay Gaind & Mr. Abhy Gaind,
Advocates (M-9818634415).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 arises out of award dated 24th February, 2011 passed by the learned sole arbitrator under the aegis of the Indian Council of Arbitration.

2. Briefly stated the facts are that an agreement for milling of paddy was signed by the Food Corporation of India (*hereinafter*, 'FCI') with M/s S.K. International Rice Mills (*hereinafter*, 'miller'), on 13th October, 1994. The miller was supplied 37010 bags (24038-06-000 quintals) of superfine variety of raw paddy and 9539 bags (6193-85-000 quintals) of common variety of paddy. The paddy was understood as being in the joint custody of FCI and the miller.

3. The miller had to undertake the milling of the paddy and supply rice back to the FCI. The process of milling was to be completed by 28th February, 1995 which period was thereafter extended to 31st May, 1995. During the currency of the contract, the miller returned 6250 bags (5926-75-

000 quintals) of superfine variety rice and 2496 bags (2362-47-000 quintals) of common variety of rice by 31st May, 1995 to FCI. The quantity milled by the miller was 13,991 bags (8,912-40-000 quintals) of superfine variety and 5454 bags (3474-22-000 quintals) of common variety. The unmilled balance available with the contractor was 23,019 bags (14943-77-700 quintals) of superfine variety paddy and 4085 bags (2648-72-800 quintals) of common variety paddy. The time for milling was extended till 31st May, 1995.

4. However, prior to that, due to various reasons, the Government decided to resort the open sale of unmilled paddy. This is clear from a letter written by the Government to Managing Director, FCI, which is extracted herein below:

“Copy of Government of India’s letter No.8/(1)/95 DR-III, dated 14th March, 1995 addressed to Managing Director, FCI, New Delhi.

Subject: - Open sale of paddy procurement in Punjab in Kharif season 1994-95.

In supersession of this Ministry’s letter of even number dated 13th March, 1995, I am directed to convey the approval of this Ministry to dispose of the stocks of the paddy procured in Punjab during the Kharif season 1994-95 through open sale subject to the following conditions: -

- 1) The open sale would cover the fine and superfine paddy in the custody of both FCI and State Agencies.*
- 2) The sale of paddy is permitted at the minimum price of Rs.442/- per Qtl. plus taxes for superfine variety and Rs.422 plus*

taxes for the fine variety. The above prices are inclusive of the cost of gunny.

- 3) The sale of paddy in lots exceeding 100 MTs would be allowed;*
- 4) The rice procured from this paddy would be exempted from levy. The Punjab Government would amend their levy order accordingly.*
- 5) The sale of paddy would cover the stock procured in the kharif season 1994-95 only;*
- 6) The sale will be open to all the interested parties for any quantity without any ceiling limits;*
- 7) The sale will not adversely affect the issue of stocks for the PDS or RPDS and other welfare programmes.*

It is expected that the sale of paddy will help in the creation of storage space for storing incoming wheat and also help in disposal of accumulated stocks which otherwise FCI may have to carry for over two years or more.”

5. Pursuant to the above letter, an open sale notice was issued on 14th March, 1995, which reads as under:

**“FOOD CORPORATION OF INDIA
PUNJAB REGION: CHANDIGARH**

OPEN SALE OF PADDY

In consequence of the appointment of the FCI as the nodal agency for organising the sale of superfine and fine varieties of paddy procured and stored in the State of Punjab during the Kharif season 1994-95 by FC, Department of Food and Supplies, Government of Punjab; MARKFED, PUNSUP and Punjab State Warehousing Corporation, interested parties are invited to purchase the abovementioned paddy at Rs. 442/-

(Rupees Four Hundred and Forty Two only) plus taxes per quintal for superfine variety and Rs. 422/- (Rupees Four Hundred and twenty Two only) plus taxes per quintal for fine variety. The above prices are inclusive of cost of gunny but tax at the rate of 4.4% on the cost of the gunny shall be levied for the sale of the abovementioned paddy within the State of Punjab and additional CST at the rate of 4% on the differential of paddy sale and purchase price shall be payable in the event of the sale of the abovementioned paddy to buyers from outside the State of Punjab. The paddy stocks shall be subject to all applicable Central/ State laws on the subject. The sale of paddy shall be in a lot of exceeding 100 (one hundred only or above) MTs without any upper limit, subject to availability. The resultant rice milled out of the above mentioned paddy thus sold shall be exempted from levy. The State Govt. have been requested to amend the levy order accordingly. It is open to the buyers to inspect paddy stocks before submitting the offer. The paddy will be issued after sale on actual weightment basis on receipt of 100% pre-payment of the total sale price on 'first-come first served' basis, except in cases where the stocks are stored in miller's premises where the concerned miller may be given the first preference in case he desires of purchasing such stocks within the time limit to be prescribed by the SRM, Punjab. Interested parties may submit offers on plain paper to the Dist. Manager, FCI of the District where the paddy sought to be purchased is stored along with such particulars as details as the department/ agencies to which the paddy belongs, name of the district, name of the centre, name/ identification of the storage point, stock identification particulars, variety and quantity sought to be purchased. While submitting their offers, the interested portion

should take remittance of full value of the quantities they intend to purchase in the form of Bank Demand Draft in favour of the Food Corporation of India. The decision regarding acceptance/ rejection of the offer shall be made in consultation with the Department of Food & Supplies, Govt. of Punjab/ State agencies wherever necessary within seven working days of the date of receipt of the offer. In case of rejection of offer, the amounts so received from the parties concerned shall be refunded immediately without an interest or other liability. The party having purchased the paddy shall be required to get the paddy issued and / or lifted as the case may be within 10 days of the date of issue of the release offer, failing which SRM, FCI reserves his right to dispose of the balance stocks at the risk and cost of the defaulting buyers. The deliveries shall be on the free on truck (FOT) basis wherever required. Orders without the prescribed Bank Demand Draft of full payment shall not be entertained. SRM, FCI Punjab Region reserves the right to reject any or all offers without assigning any reason whatsoever or to close the sale at any time without notice.

B. PATIALA, FARIDKOT, JALANDAR

SH.AK SATIJA, AM(COMP.)

C. AMRITSAR, GURDASPUR, FEROZPUR

SH, RAMESH KUMAR, AM(STG)

D. LUDHIANA, BHATINDA, CHANDIGARH

SH. NEGI, AM(OC), NO, PB.

THE ASSTT. MANAGERS WILL DEAL WITH THE OFFERS RECEIVED GROUPWISE, SEPARATE THE DEMAND DRAFTS FROM THE OFFER LETTERS AND PREPARE A STATEMENT OF D.DS RECEIVED TO BE SENT TO CASH SECTION OF RO PUNJAB FOR ACCOUNTAL. THE ASSTT. MANAGERS WILL

ALSO ENSURE COMIPLATION OF THE DISTRICTWISE DETAISLOF OFFERS RECEIVED AND PREPARATION OF STATEMENTS BY 10 AM EVERYDAY TO BE PLACED FOR THE PERUSAL/ ORDERS BY THE SRM.”

6. While the open sale notice was in operation, the Government took a further decision to extend the contract with the millers from May, 1995 and August, 1995 in case of those millers who expressed interest to mill the paddy. The said decision dated 14th August, 1995 reads as under:

*“THE FOOD CORPORATION OF INDIA
REGIONAL OFFICE, PUNJAB,
CHANDIGARH*

No.10/22(4)/P.Sh/Policy/94-95

Dated: -14.8.95

*The Distt. Manager.
Food Corporation of India,
DO, Amritsar/Bhatinda/Chandigarh/
Pathankot/Ferozpur/Gurdaspur/
Hoshiarpur/Jalandar/Kapurthala/
Ludhiana/Patiala/Sangrur*

*Sub:- Grant of Extension in paddy milling
contractsreg*

Sir,

The matter with regard to the extension of contracts in paddy milling has been examined/reviewed & it has been decided that the period of milling of paddy be extended upto 31.8.95, if a miller is willing to mill FCI paddy but has suffered delay due to reasons beyond his contract, FCI will have to be liberal. However, exceptions shall have to be made in case of those

millers who are defiant in view of their agitation due to no implementation of CFTRI Report.

Action be taken accordingly.

Yours faithfully,

Sd/-

*Joint Manager (Comml.)
For Sr. Regional Manager.*

Copy to: -

- 1. The Dy. Manager (QC), FCI, RO (PB) Chandigarh.*
- 2. The Dy. Manager (A/cs) FCI, RO(PB) Chandigarh.*
- 3. PA to RM, M (F&A)/(S&C) FCI, RO(PB), Chandigarh.*
- 4. PA to SRM."*

7. Simultaneously, another open sale notice was issued on 23rd August, 1995, which is extracted herein below:

"From

*Director Food Supplies and
Special Secretary to Govt. Punjab*

To

*All plstt. Food & Supplies Controllers in the
State.*

*Memo No. RP-I (455-Part file) – 95/2357
Dated, Chandigarh 23.8.95.*

Subject:- Open sale of paddy during 1994-95.

In partial modification of Head Office Memo No. RP-I (455-Part file) – 95/2341 dated 21.8.95 on the subject cited above, Government of India has approved disposal of unmilled stocks of paddy belonging to state and its agencies which is lying with Rice Millers Dealers at the following revised rates:-

Fine: Rs. 375/- per quintal plus taxes.

Superfine: Rs.395/- per quintal plus taxes.

All other conditions for the sale/issue of paddy stocks will be one same as conveyed vide Govt. of India's letter dated 14.3.95, copy of which is enclosed.

Sd/-

*Deputy Director (Procurement)
For Director Food & Supplied
Punjab.*

*Ends.No.RP-(455-Part file)-95/2358 Dated
23.8.95*

A copy of the above is forwarded to:-

- 1. Deputy Director (Field) Ferozepur, Jalandhar and Patiala.*
- 2. Controller Food Accounts.*

Sd/-

*Deputy Director (Procurement)
for Director Food & Supplies Punjab.*

Endst.No.RP(455-Parte file)-95/2359 dt. 23.8.95

A copy of the above is forwarded to: -

- 1. Managing Director, Market (2) Managing Director, Punsup. 3. Managing Director, FCI."*

8. Thus, while on the one hand the time for milling was being extended, initially until May 1995 and thereafter till August 1995, simultaneously open sale notices were also issued for sale of the unmilled paddy. Thus, the milling of paddy was no longer considered essential by the Government itself, for various reasons.

9. The miller in the present case, entered into correspondence with the FCI for the purchase of paddy pursuant to the open sale notices. The miller wrote letter dated 15th May, 1995 informing the FCI that it had milled some

part of the paddy but the FCI was not accepting the delivery of the same. In view thereof, the miller expressed his interest to purchase the paddy, in the following terms:

“REGD

BATALA 15/5/1995

SKI/Paddy/Shelling/Crop/94-95

*District Manager,
Food Corporation of India,
Gurdaspur*

Sir,

In response to your letter dated 27-4-95 and a telegram received from your Food Store Batala, by which you are pressing hard to deliver the resultant Rice against the paddy lying with us. In this respect we may bring to your notice that the paddy lying in our mill for shelling has not been purchased under the required specifications and the rice produced out of this paddy is not being accepted by the FCI Deptt staff at Batala. Two consignments of rice are lying dumped at the SWC BAT-I since 17/4/95, out of which 125 bags were lifted and headed for Jammu. We have not been given any receipt by the concerned officials so far.

Under the prevailing circumstances we are totally helpless to deliver your rice stocks. Please let us know as to what is the rate of paddy super fine and common, if we so wish to purchase it.

Thanking You,

Yours faithfully,

Sd/-

S.K. International Rice Mills.

*C.C. to A.M. Depot Unit-III
For information and n/a.”*

10. As per the above letter, therefore, the miller offered to purchase the

paddy. Another letter written by the miller on 1st June 1995 shows that the FCI was in fact guilty of misleading and creating huge amount of distress to the millers. The said letter reads as under:

“From:-

*S.K. International Rice Mills,
Aliwal Road, Bye Pass,
BATALA.*

To

*The Senior Regional Manager
Food Corporation of India, Punjab Region
Chandigarh*

*Sub:- Storage of FCI Paddy in our Mill
premises during crop year 1994-95.
Offer to deposit the cost of balance
paddy.*

Respected Sir,

With due respect we bring to your kind notice the following facts and figures relating to the paddy stored by the FCI in our Mill premises during crop year 1994-95 and the harassment being meted out on us due to the reasons which are un-understandable.

- 1. Due to shortage of space FCI decided to store the FCI's Paddy in the Rice Mill premises during crop year 1994-95. We offer storage and milling of FCI paddy up to 2000 MT.*
- 2. When the purchases of paddy by FCI exceeded its target, we were forced to store additional quantity of 1000 MT. of Paddy.*
- 3. That we started milling and delivery of resultant rice as per the terms and conditions of the agreement, executed between us and the Food Corp. of India.*
- 4. As per agreement We were to mill entire paddy up to 28.2.95 and we started milling of*

Paddy and delivery of resultant rice as per the target, terms and conditions of agreement.

5. *During the month of Jan. 1995 and Feb. 1995 some special squads visited Gurdaspur District for inspection of rice stocks i.e. levy and custom milling.*

6. *The squads were authorised to inspect rice consignments taken by FCI after Dec. 1994.*

7. *Due to the fear that any consignment of rice may not fall below the prescribed specifications, the technical and depot staff refused to accept new consignments on one pretext or the other. This halted the process of milling the FCI paddy.*

8. *In the mean time assessing that rainy season was approaching we insisted FCI officers a number of time through our various representations dated 10-3-1995, 21-3-95, 27-3-95, 4-4-95, 10-4-95, 20-4-95, 26-4-95, 1-5-95 and 15-5-95 (copies enclosed for reference), that since the resultant rice was not being accepted due to the reasons which were well in the notice of District Manager and Senior Regional Manager Punjab and had represented to take delivery of resultant rice at a number of times rice consignments were dumped in FCI godowns but the so were rejected without making any inspection either by the depot staff or the technical staff. For instance, we dumped rice in FCI depot at Batala-I on 17-4-95 which remained dumped there for about three months and we were forced to lift without making any inspection.*

9. *The FCI introduced a policies to sell the Paddy at fixed rate of Rs.442/- per Qts. for superfine paddy. We were forced to make purchase of paddy by the local FCI staff and we deposited the cost and received 100 mt paddy superfine.*

10. *The FCI introduced a policy for sale of paddy stored in the Mill premises and we offered*

to purchase the entire paddy i.e. superfine and common stored in our Mill premises. A copy of our offer against tender enquiry dated 16-6-95 is enclosed herewith (AS annexure – ‘A’)

11. Till the time 1300 MT. paddy superfine and 200 MT. paddy common remained balance in our mill premises as unmilled and unpurchased and we offered to purchase the same.

12. The FCI accepted our offer to purchase 1300 MT. paddy superfine @ 413/- per Qts. (copy enclosed as Annexure–‘B’)

13. We deposited the cost of entire paddy purchased by us, i.e. 1300 MT. and the District Manager FCI Gurdaspur issued release orders for lifting this paddy. (Copy enclosed as Annexure – ‘C’)

14. The offer to purchase IR-8 paddy against tender enquiry dated 16-6-95 is still lying in FCI Headquarters awaiting decision by the authorities concerned.

15. That we are enclosing herewith a balance sheet (Annexure - D) giving details of total paddy store (variety-wise) in our mill premises, paddy milled and rice delivered, paddy purchased @ Rs. 442/- per Qtl. and paddy purchased by us against tender enquiry dated 16-6-95 and balance paddy still lying in our mill premises.

16. That floating all the norms and principles and ignoring all documents even issued by the FCI offices, the District Manager FCI Gurdaspur has served a notice to us to deposit 9200000,- (Ninety two Lacs) against unmilled paddy.

17. That vide our request dated 18-12-95 (copy enclosed), we requested DM FCI Gurdaspur as to how this amount has been calculated, but since then nothing has been conveyed to us in writing. However, unofficially it is gathered that FCI has claimed one and half time the economic cost of not

only the balance IR-8 paddy but also for the paddy, we have already purchased on FCI's offer and for which release orders meant for lifting of paddy by us have also been included.

18. *Despite repeated request to DM Gurdaspur and SRM Punjab to give justice, nothing has been done in this regard and the records/calculations made at District Office Gurdaspur level, have been hidden as the records maintained by a private concern and not by the public enterprise.*

19. *The concealing of the facts and figures and all related matters and its the purposes are not understandable by us, but are best known to FCI officers. Now, efforts are being made for getting the case registered against us under criminal laws.*

20. *As per the terms and conditions of the agreement all the matters of differences and disputes are to be referred to an arbitrator for adjudication. On the directions of Regional Office Punjab, the DM FCI Gurdaspur has also initiated the process of referring the cases to an arbitrator and it is gathered that the matter is pending in the zonal office (north) FCI headquarters.*

21. *That from the above we expect that you will be judicious enough to consider that –*

- a) *FCI officials failed to take delivery of resultant rice due to the reasons best known to them.*
- b) *When the offer was made by FCI to us for purchase of unmilled paddy we accepted it.*
- c) *Till date we are ready to deposit the cost of balance/unmilled paddy at the same rate, which we offered against FCI's tender enquiry dated 16-6-1994.*
- d) *That FCI has been considering to refer the case for arbitration.*
- e) *That ignoring all the principles, norms, terms and conditions of the agreement,*

efforts are being made for registration of cases under criminal laws simultaneously.

We request your kind honour to intervene and save us from unnecessary harassment and kindly inform us whether we may deposit the cost of remaining paddy as requested above. This may save us as also to the FCI from litigation. Hoping for an early decision and intimation.

Yours Sincerely,

Enclosures as above.

Sd/-

*for S.K. International
Rice Mills, Batala.”*

11. A perusal of the above two letters dated 15th May, 1995 and 1st June, 1995, shows that the miller repeatedly tried to mill the paddy and deliver the rice. But FCI was not taking the rice due to its own internal issues. On at least one occasion, the miller who had supplied the rice had to take it back as inspection of the rice was not being conducted by the FCI inspectors. Under those circumstances, the miller started purchasing the unmilled paddy by paying the advertised rate. The miller expressed huge grievance about the criminal cases being pursued against the millers in spite of the reasonable steps having been made by the miller to FCI and no fault lying with the miller.

12. The FCI then responded to the letters of the miller on 16th June, 1995 in the following manner.

**“THE FOOD CORPORATION OF INDIA
DISTRICT OFFICE
GURDASPUR**

No.D/22(4)/P.sh/94-95/

Dated:-16.6.1995.”

M/s S.K. International Rice Mills

Sub:- Milling of FCI paddy stored in the mill premises -regarding.

Sir,

Reference this office registered Notice of even no.1714 dated 25.5.1995 regarding delivery of balance rice due against paddy IR-8 and PR-106 stored in your mill premises. You are also at the choice to deposit the cost of paddy S/Fine if you are interested for the same. But you have neither delivered the balance rice nor deposited the cost of paddy S/fine sofar.

You are once again requested to deliver the balance rice IR-8 and PR-106 or deposit the cost of paddy S/fine within three days of the issue of this letter otherwise the legal action will be initiated against you as per terms and condition of the agreement.

Yours faithfully,

*Sd/-
District Manager”*

13. Consequent to the open sale notices, the miller purchased various quantities of unmilled paddy on various dates, details of which, inter alia, are set out below:

<i>Dates</i>	<i>Quantity (in Quintals)</i>	<i>Amount paid (in rupees)</i>
<i>20th July 1995</i>	<i>2600-00-000</i>	<i>5,36,900/-</i>
<i>25th July 1995</i>	<i>2600-00-000</i>	<i>5,36,900/-</i>
<i>3rd August 1995</i>	<i>2545-00-000</i>	<i>5,36,900/-</i>
<i>19th August 1995</i>	<i>2560-00-000</i>	<i>10,73,800/-</i>
<i>15th September 1995</i>	<i>2540-00-000</i>	<i>5,36,900/-</i>

14. Thus, a substantial stock of unmilled paddy was bought back by the

millar and the remaining was sold by FCI in the open market. Out of the 14943 quintals of superfine variety, the miller had bought back 12845 quintals which was quite substantial. The representation made by FCI in the above letter is clear – either purchase the stock or legal recourse will be adopted – meaning thereby if the Miller purchases the stock of unmilled paddy, the disputes would come to a close.

15. After the miller had purchased the entire stock by paying the value for the unmilled paddy, FCI invoked arbitration. There were various issues as to the manner in which the arbitration was to be conducted and whether the arbitration clause itself survived. The Supreme Court, vide order dated 17th July, 2003, referred all the matters of the FCI to the arbitration under the aegis of the Indian Council of Arbitration. The relevant portion of the order of the Supreme Court in ***Food Corporation of India v. Indian Council of Arbitration AIR 2003 SC 3011*** reads as under:

“15. Keeping into consideration all these aspects we consider it just and more appropriate, proper and reasonable – both in law and in equity and interests of justice to direct ICA to forthwith and not later than sixty days from this date nominate the arbitrator as sought for by the appellants and place the matter before such arbitrator, leaving open to the parties to raise and pursue all objections and contentions and thereby seek for the decision of the arbitrator as envisaged under Section 16 of the 1996 Act, besides getting adjudication of the respective disputes in these cases on merits and in accordance with law. Both parties will have leave and liberties to do so before the arbitrator on being nominated/appointed by the ICA, pursuant to these orders.”

16. FCI filed its claims against the miller under various heads. The Miller

filed its pleadings and documents. The main claim of FCI was in respect of the unmilled paddy and the recovery of economic cost of the same from the miller. On this issue, the finding of the learned Arbitrator is as under:

“..... It appears that as the required work could not be completed in time and then as the new crop was expected to come the FCI decided to sell the remaining un-milled paddy by open sale and the Miller purchased the paddy at offered price. This fact has been disclosed in the letter of S.K. International dated 1st June, 1995. One more fact which has been disclosed in para 8 of the aforesaid letter is that the respondent had represented to the claimants to take delivery of resultant rice at a number of times and rice consignments were dumped in FCI godowns but these were rejected without making any inspection either by the depot staff or the technical staff. One consignment remained dumped for about three months and then the respondent were forced to take it back.

Due to paucity of space for new crop the claimants took action to sell the paddy in open market. All the terms and conditions relating to the sale of paddy were conveyed by the Ministry's letter dated 14th March, 1995. Due to this decision, it appears, the claimants did not take any action as per terms and conditions of the agreement to get the paddy milled at the cost of the Miller or take any other action by forfeiting the security deposit. As per clause 16 the Sr. Regional Manager reserves the right to terminate the agreement, to withdraw from the contract and to do the recovery for shortages of paddy and rice at 1 ½ times the economic cost of equivalent paddy/rice. The claimants did not give any notice also to the respondent regarding any shortfall in the recovery

of rice, short supplied quantity of rice or shortage in paddy rice.

In the above circumstances in my view both the parties have committed fault- the respondent in not adhering to the schedule of milling of paddy and delivery of rice as per agreement as the onus of ensuring the schedule was on him and the claimants in not taking timely action to give any notice of default to the respondent and in not taking any action under clause 16 of the agreement. The claimants sold the paddy in open market in their own interest. As the decision to sale the paddy was taken in the month of March, 1995, the rice hereafter, as appears from the records, was not excepted by the claimants from the miller. Though extension was given upto 31st May, 1995, but no apparent action regarding milling of paddy was taken by the claimants. Now the want to claim the cost of that paddy at 1½ times of the economic cost, which keeping the circumstances in view cannot be allowed. Therefore the claim for Rs.1,52,07,889.63 towards cost of balance paddy at 1½ times of the economic cost is rejected.”

The arbitrator held that though both parties were in breach, since the unmilled paddy was sold by FCI, no damages can be recovered.

17. The main objection pressed in this petition is against the rejection of the claim relating to 1½ times the economic cost of paddy.

18. Mr. Deepak Dewan, Advocate for FCI submits that the notice for sale in the open market was issued because the next *Kharif* season was coming and in order to ensure that there is a circulation in the market, a policy decision was taken to retrieve the paddy lying with the miller and sell the same in the open market. The sale in the open market was also forced due to

the fact that the millers did not mill the paddy and supply the rice as per the contract. The Punjab & Haryana High Court in its judgement dated 30th May, 1996 had permitted the FCI to sell the paddy in the market, but it was without prejudice to FCI's rights to claim damages from the miller. It is his further submission that the Arbitrator has failed to consider the contractual terms and hence the same requires interference.

19. The learned counsel for the miller submits that as per the contract, 1 ½ times economic cost can be recovered only in the situations as are contemplated under clauses 7, 8(iii), 9(i), and 16(c) of the agreement. It is his further submission that under clause 13, the FCI having not forfeited the security amount and having given adjustment of the same to the miller itself proves that the miller is not guilty of breach of any terms of the contract. It is his submission therefore that the Arbitrator was right in not awarding the 1½ times economic cost to the FCI.

Analysis and Findings

20. Before going into the rival contentions, it is necessary to set out some of the terms of the Milling contract entered into between the parties. The same read as under:

*“2. The miller may associate himself at the time of paddy purchases in the mandis and weigh bridges to cross check its quality and quantity respectively. Paddy shall be moved from mandis to mill premises to be stored in **joint custody of FCI and the miller** and the transportation and stacking operations in mills premises shall be arranged and cost against these operations shall be borne by the Food Corporation of India. The miller shall undertake storage of paddy in his premises without claiming any storage and*

preservation charges.

7. The miller shall be responsible for the safe custody milling of paddy issued to him for/delivery of rice, as per agreed and recovery of out-turn ratio. Miller shall also take good and losses that may be incurred in paddy/rice during transit/storage at 1.5 times the economic cost of the variety of paddy/rice towards the shortfall.

8. i) The miller shall ensure that the resultant rice after milling the paddy is aerated for 72 hours before bagging.

ii) The degree of polish given to rice shall be 3 to 5% and shall not contravene the provisions of Rice Milling Industries (Regulation and Licensing) Rules, 1959 as amended from time to time.

iii) In case there is shortfall in the recovery of rice the miller shall pay to the Corporation the cost of paddy equivalent to the shortfall at the rate of 1 & half times the economic cost of paddy.

iv) The by-products viz. Broken rice, rice kani, nakoo, phak and rice bran etc., obtained in the shelling of paddy shall be the property of the miller and the Corporation shall have no responsibility in regard to these.

v) The miller will be paid shelling and other charges at the milling operations are completed and the entire rice is delivered to F.C.I.

9. i) The entire quantity or rice of all variations delivered by the miller to the Corporation shall conform to the specifications as fixed by the Government of India as amended from time to time in any other orders of NOTIFICATIONS issued by Government of India from time to time. The stocks of rice not conforming to the specifications so laid down, shall be liable to be rejected in respect of such quantity of rice which is not found to be within specifications and the miller shall be liable to offer

fresh stocks of rice conforming to the specifications, he shall be liable to the Corporation for the quantity of rice short supplied at the **penal rate of one and half times, the economic cost of the converted variety of paddy equivalent to the shortages.** The decision of the Sr. Regional Manager, Food corporation of India, Punjab (hereinafter referred to as the SRM) in his behalf shall be final.

ii) The stocks of rice shall also be subject to the inspection of the staff of the Corporation at the time of delivery. Any quality allowance determined in FCI laboratory according to the specifications shall be recovered from the millers.

iii) The miller shall complete delivery of rice within 10 days of issuance of paddy to him and rice due to the Corporation on the total quantity of paddy issued to him or in joint custody released at regular interval shall be delivered not later than 28th February, 1995. The miller shall further ensure milling of paddy and delivery of rice in the following manner: -

October / November	20%
December	26%
January	26%
February	26%

However, in case the process of milling is slowed down due to operational exigencies beyond the control of Miller/SRM may consider and extend the above mentioned milling schedule.

13. If the miller fails or neglects to observe or perform any of his obligations under the contract, it shall be lawful for Corporation to forfeit the security after giving due opportunity and get the work executed at the Miller's risk and cost and to adjust either in whole or in part extra expenditure and or the damages, if any suffered by the Corporation as consequence from out of the security deposit furnished by the Miller or in any other manner.

Save as aforesaid, if the Miller duly performs and completes and Contracts in all respect and presents an absolute 'No Demand Certificate' from any other Officer / Official nominated by him for the purpose and returns in good condition any property of the corporation remaining with him, the Corporation shall refund the security deposits to the Miller after deducting all costs and all other expenses that the Corporation may have incurred and all dues and other money including all losses and damages which the Corporation is entitled to recover from the Miller.

Provided that if the loss of damage exceed the amount of security deposit, Corporation shall be within its right to recover the same in accordance within the law.

16. The contract shall come into force with effect from the date of execution of this agreement and shall remain in force till the completion of milling. The Sr. Regional Manager however reserves the right.

a) To terminate the agreement with the miller for shelling of paddy into rice at any time during its currency without assigning any reasons. In that event the miller shall render complete accounts of paddy rice and gunny bags to the corporation in its custody and also return the stocks as per direction of the corporation.

b) To withdraw from the contract at any time the milling in respect of whole or part of the stocks covered by the contract not yet lifted by them if he considers it necessary to do so. The decision of SRM in this regard shall be final and no claim shall be entertained against the corporation for any loss of damage or suffered by the miller on the account of such withdrawal of the work.

c) The miller shall be responsible to make good all shortages in paddy, rice and gunny bags

that might occur while in his custody till the entire stocks are returned. These shortages can with the consent of the corporation be made good in kind according to the specification and variety of paddy, rice and gunny bags involved. In case the miller fails to do so, recovery would be made from him for shortages of paddy and rice at 1 & half times the economic cost of equivalent paddy/rice according to the variety involved.”

21. A perusal of the contract reveals that the rights of the FCI to recover 1 ½ economic cost is provided only in clauses 7, 8(iii), 9(i), and 16(c). The contract, is slightly contradictory in terms of the custody of the paddy. On the one hand, in clause 2 of the contract, it is clearly mentioned that the paddy is in the joint custody of the Miller and FCI but, in the other clauses, they seem to suggest that the storage and safe custody is that of the miller. Be that as it may, the fact remains that only in case the miller is in breach, the economic cost @1 ½ times is recoverable.

22. Before going into the legal issues, it is clear from the analysis of the correspondence that the miller was given a choice to, either mill the paddy and supply the rice, or purchase the paddy itself. The miller in the present case, chose the latter. Thus, upon the purchase being made, no claims could have in fact been filed by the FCI against this miller. The clear representation of the FCI in its letter dated 16th June, 1995, was that if the miller purchased the paddy, no legal claims would be raised.

23. According to the Miller, the claim of 1 ½ times charge could be raised only in the following circumstances:

“11.Claim of 1½ times charge preferable only under Clause-7; 8(iii) and 16(c)

A. No rice milled at respondents risk and

cost.

B. Paddy continued to remain in joint custody, no loss occurred in paddy/rice during transit, Clause-7 not applicable.

C. No shortfall in recovery of rice, rice milled appropriately accounted for. Rest of the paddy sold in open market, as per FCI directions without notice of withdrawal of same. No shortfall under Clause 8(iii).

D. No failure under clause 16(c) attributed to respondents; no shortage of paddy claimed. Stocks could not be returned, as they were sold by claimants in open market. On the said account also, no loss attributable to answering respondents.”

24. None of the above circumstances arose, as per the miller and since the clause is penal in nature, it has to be strictly construed. The specific defences of the Miller include:

- i. That as per clause 9, though the paddy was stored in the Miller's premises, the same was in joint custody but was under the watch of the FCI. It was only when the FCI specifically released the paddy, that the miller could mill the same. There is nothing on record to show that the specific release orders were issued for milling at the prescribed time;
- ii. The quality of paddy released was also not appropriate leading to change in the quality of rice that could be supplied. A decision was in fact taken by the Government to reduce the quality of rice to be supplied. This decision was taken only in May, 1995;
- iii. The FCI committed breach of contract by announcing open sale of the unmilled paddy on 14th March 1995;
- iv. The unmilled paddy was sold by the FCI at a profit margin

which has not been accounted for;

v. There was no shortage of the unmilled paddy at the miller's premises;

25. Apart from the correspondence with the miller, which are specific to the present case, another important fact which is evident from the correspondence and the documents on record, is that FCI was quite conscious of the various issues faced by the millers. The main grievance of FCI was only in respect of those parties who had indulged in pilferage and siphoning off of unmilled paddy. This is clear from a letter dated 8th November, 2005 sent by FCI, Chandigarh to all the District Managers of FCIs located across Punjab. The said letter reads as under:

*“FOOD CORPORATION OF INDIA
REGIONAL OFFICE: PUNJAB
BAY NO.34-38, SECTOR 31-A
CHANDIGARH*

*No.D/22(4)/Paddy-sh-cum-stg./ICA-corres/
94-95/Vol.III/*

Dated :- 08-11-2005

*The District Manager,
Food Corporation of India,
Distt. Office,
Amritsar/Bhatinda/Chandigarh/Faridkot/
Ferozepur/Gurdaspur/Jalandhar/
Ludhiana/Patiala & Sangrur.*

*Sub:- 374 Paddy shelling cases pending
with ICA New Delhi relating to
Paddy shelling contract 1994-95
...regarding.*

Sir,

*Kindly refer to the communication on the
subject cited above.*

In this context, it is informed that the above matter has been examined in this office in consultation with AGM(Legal) and Finance(local). The photo copy of relevant noting sheet. Report of Zonal Office Committee dated 24.8.04 & letter of Zonal office No.Proc.30(64)Rice Millers of Ph/94-95/05/NZ/Vol.XII dated 14.10.05 are enclosed herewith.

The detailed list of Arbitration cases as mentioned in Zonal Office Committee report is given under:

- (a) No. of cases where NDCs have been already issued – 73 cases*
- (b) No. of cases where FCI has been able to recover the required percentage of rice or also cash in lieu of rice for the rest of the paddy stocks resulting therein that FCI does not have any claim/demand from the party = 261 cases*
- (c) No. of cases consequent upon pilferage/dispersal of stocks by the parties at their own without knowledge of FCI. FIRs were filled followed by court cases both criminal cases/ recovery suits – 40 cases.*

Negotiations may be held with these 40 millers who wish to deposit FCI claim for settling the long pending dispute out of court/Arbitration.

You are therefore, requested to examine each and every case in the light of direction imparted by the Committee report of Zonal office and further requested to get compromise petition from such rice millers in consultation with FCI empanelled Advocate to be submitted to ICA indicating security deposits. After that take up the matter with ICA for refund of tentative amount deposited with ICA in each case for FCI share. The above said process be completed within fortnight positively.

Further requested to furnish party-wise(details as listed) under Col.A.B & C details of cases to this office immediately.

*Encls:- Photo copy of Zonal office
Committee report.*

2. Photocopy of letter no. Proc.

30(64)Rice Millers of

Ph/94-95/05/NZ/

Vol.XII dt 14.10.2005

Yours faithfully,

Sd/-

*Assistant General Manager (Comml.)
for Regional Manager”*

26. A perusal of the above letter shows that in respect of a large number of millers No Due certificates had been issued; in respect of several millers, settlements have been entered into and only 40 cases were those of millers who had indulged in pilferage. Thus, broadly there were three categories of millers:

- i. Millers to whom No Due Certificates have been issued – 73 cases
- ii. Millers in respect of whom FCI was able to recover the required percentage of rice and/or also cash in lieu of rice for the rest of the paddy stocks resulting therein that FCI does not have any claim/demand from the party – 261 cases
- iii. Millers who had committed pilferage/dispersal of stocks without the knowledge of the FCI wherein FIRs were filed followed by civil suits and recovery suits – 40 cases

Thus, in cases where rice was partly supplied and cost of unmilled paddy was recovered, the FCI would not have any claims.

27. A number of settlement deeds have also been placed on record, which show that the FCI had settled with millers on 20 to 30% of 1½ times

economic cost. The illustrative list of such settlements, which are placed on record, as under:

- i. M/s Vimal Sakhari & Brothers, Batala, where the 1 ½ times rate worked out to Rs. 1,09,456/- the dispute was settled for Rs. 28,530/-. This was a case where the miller had committed pilferage of the stock.
- ii. M/s. Abrol Industries Rice Mills, Batala where the 1 ½ times rate worked out to Rs.3,97,780.17/- the dispute was settled for Rs.76,026.43/-. This was a case where the miller had committed pilferage of the stock.
- iii. M/s Ashoka Rice Mills, Batala where the 1 ½ times rate worked out to Rs.3,59,457.47/- the dispute was settled for Rs.31,657/-. This was a case where the miller had committed pilferage of the stock.
- iv. M/s Shiv Shakti Rice & General Mills, Batala where the 1 ½ times rate worked out to Rs.19,84,476.36/- the dispute was settled for Rs.41,388.06/-. This was a case where the miller had committed pilferage of the stock.

28. Thus, insofar as the millers who were given the option to purchase the unmilled paddy are concerned, no arbitration was to be commenced by FCI. The letter to the miller dated 16th June, 1995 is absolutely clear i.e. that the miller could deposit the cost of paddy, failing which, legal action was to be initiated. The miller, in the present case, had purchased the paddy in the open sale with a clear understanding based on the representation of the FCI that if he did not purchase the unmilled paddy, legal action would be commenced. The question that, therefore, has arisen is as to whether by

issuing the open sale notice, by giving an option to the miller to purchase the unmilled paddy, by issuing no demand certificates, by entering into the settlements, had not the FCI waived its rights to claim damages from the millers.

29. The Government's policy, for whatsoever reasons, which could include the lack of storage space for the upcoming season, unrest among the millers, lack of storage space for storing rice, issues with quality of paddy, had taken a policy decision to conduct the open sale of the paddy.

30. The millers were permitted to purchase the unmilled paddy, which were lying in their own premises at the rate fixed by FCI and were, in fact, to be given the first preference to purchase the entire quantity of balance paddy. The milling contracts were extended till May, 1995 and in some cases till August, 1995. Simultaneously, the open sale notices were also in operation. It is, therefore, clear that the millers had the option of either abiding by the milling contract that they had executed with the FCI or alternatively could pay the cost of the unmilled paddy and use the paddy for their own consumption/sale. It was never in the contemplation of the millers that even though they purchased the paddy, they would still be liable to pay 1½ times the economic cost. This is not reflected in the correspondence. In fact, the representation by the FCI has been to the contrary.

31. The FCI has not alleged in the present case that any amount of the paddy was either siphoned off or not retrieved in the present case. The entire balance paddy was retrieved and was sold either to the miller or in the open market at the price fixed in the sale notice. Once the price of the paddy was fixed @ Rs.402/- for common variety and Rs.442/- for superfine variety by the FCI itself, damages at a higher rate cannot be awarded in favour of the

FCI. Moreover, the intervening act of the Government in issuing the sale notice also resulted in a situation wherein the miller could no longer mill the paddy inasmuch as the first sale notice was issued in March, 1995 itself.

32. The 1 ½ times economic cost was, as per the relevant clauses of the contract, **a penal rate**. It is the settled law as per the judgment in *Oil and Natural Gas Corporation v. Saw Pipes (2003) 5 SCC 705* that any amount in the nature of penalty cannot be imposed or claimed unless and until the same is proved in accordance with Sections 73/74 of the Indian Contract Act, 1872. The relevant observations of the Supreme Court are extracted below:

““68. From the aforesaid discussions, it can be held that:--

(1) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same;

(2) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act.

(3) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The Court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract.

(4) In some contracts, it would be impossible for the Court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, Court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation.”

Thus, the claims in respect of 1½ times economic cost are not liable to be granted as the same is unreasonable, in the facts of the present case.

33. In a similar case of ***Food Corporation of India v. M/s Khosla Brothers, Gurdaspur (Punjab) & Ors.*** [OMP 496/2011 decision dated 12th January, 2017] A Ld. Single Judge of this Court has taken the view that the economic cost is not liable to be recovered in view of the fact that the miller had purchased the entire stock of the unmilled paddy. The observations are set out below:

“11. The ground situation, however, different. The extension of the period for completion of the milling was extended suo motu by the FCI up to 31st May 1995. Under Clause 14 of the contract, the issue in lifting of paddy was limited to the extent of the advance rice delivered by the Miller to the FCI. Supplies of the paddy were to be regulated in accordance with the quantity of rice returned by the Miller. When it transpired that the milling could not be completed within the time stipulated and as the new crop was expected to come with there not being available the requisite storage space, the FCI decided to sell the remaining un-milled paddy by open sale and the Miller purchased the paddy at offered price. The FCI sent first a letter dated 11th July 1995 to the Miller serving him the final notice to deliver the resultant rice by getting the release order after

depositing the cost of the gunnies to be retained by him against delivery of paddy. Another letter was sent on 20th July 1995 asking him to deliver rice Super Fine immediately against balance paddy. By a further letter dated 11th October 1995, FCI informed the Miller that the economic cost of paddy crop for the year 1994-95 had been worked out. In the meantime, the Miller by his letter dated 10th April 1995 informed the FCI that the staff of the FCI had not been accepting the rice on one pretext or the other and had been harassing him.

12. The learned Arbitrator on noting the above conflicting versions of both the FCI and the Miller concluded that both parties were blaming each other for non-execution of the agreement in time. The learned Arbitrator observed as under:

“Actually it appears that due to paucity of space for new crop the claimants took action to sell the paddy in open market. All the terms and conditions relating to the sale of paddy were conveyed by the Ministry's letter dated 14th March, 1995. Due to this decision, the claimants did not take any action as per terms and conditions of the agreement to get the paddy milled at the cost of the Miller or take any other action by forfeiting the security deposit. As per clause 16 the Sr. Regional Manager reserves the right to terminate the agreement, to withdraw from the contract and to do the recovery for shortages of paddy and rice at 1½ times the economic cost of equivalent paddy/ rice. The claimants did not give any notice also to the respondents regarding any shortfall in the recovery of rice, short supplied quantity of rice or

shortage in paddy etc.”

13. Consequently, the learned Arbitrator apportioned the blame for failure to complete the contractual specifications both on the FCI as well as the Miller. It was noted that the FCI had sold the paddy in open market “in their own interest”. From the records, the learned Arbitrator was able to ascertain that after March 1995, the FCI decided not to accept rice from the Millers. Further although extension of time was given up to 31st May 1995, no action regarding milling of the paddy was taken by the FCI. A settlement deed was signed in respect of some of the Millers but not in the case of the Respondent herein.

14. In those circumstances, the learned Arbitrator was unable to accept the claim of the FCI as regards economic costs of the unmilled paddy.”

34. Other judgements relied upon by the FCI are ***FCI v. The Indian Council of Arbitration & Ors. [OMP 280/2000 decision dated 4th August, 2005]*** where the clause for recovering the 1 ½ times the rate as economic cost was upheld but the ingredients of the clause were held to have been not satisfied. In ***FCI v. Indian Council of Arbitration [OMP 78/2000 decision dated 19th July, 2012]***, the judgement in ***OMP 280/2000*** is followed. In ***FCI v. Malwa Rice Mills & Ors [OMP 397/2012 decision dated 11th September, 2018]***, this Court had set aside the award passed by the Arbitrator as being wholly unreasoned. All these three judgements were ex-parte decisions wherein the Miller had not entered appearance and put forth their cases. Moreover, there was no evidence to show as to whether the Millers in these cases had purchased the unmilled stock or not. Further the award in the Malwa Rice Mills case was completely self-contradictory and lacked

coherence. Under those circumstances the award had been set aside.

35. The FCI also relies upon the decision of the Ld. Single Judge of the Punjab & Haryana High Court in a PIL being Civil Writ 18980/1995. The Court had observed in the said matter as under:

“Under the circumstances, the petition is disposed of with the directions to the respondents to take steps and pass appropriate orders regarding the disposal of 1994-95 paddy stocks on the basis and in view of the joint inspection conducted and reports submitted to the Govt. of India, within a period of one month. The respondents are further directed to get 1994-95 paddy crop milled on priority basis. If the paddy stocks of 1994-95 crop are not disposed of within a period of three months from today all such remaining stocks shall be sold in open market and in that eventuality no Rice Millers in the State of Punjab shall be allowed to purchase the stock either directly or indirectly. The respondents are further directed to take steps for the disposal of 1994-95 paddy stocks by approaching different States requiring such paddy stocks. This order would not in any way prevent or hamper the Food Corporation of India to claim damages or compensation from the mill owners for the alleged violation of the agreement executed by them. Till the stocks are disposed of, the respondent No.3 shall take sufficient steps for the safeguard of paddy crop lying in the godowns.”

36. The above observations do permit the FCI to raise claims against the Millers. However, the same does not mean that the claims are not to be examined in each case. There are several cases where the unmilled paddy was not recovered or was siphoned off. In some cases, the millers had not themselves purchased the paddy. In yet other cases, part of the stock was

purchased by the millers and part was sold in the open market. The claims of FCI are to be considered on a case to case basis. The above observations cannot be construed to mean that 1 ½ times the rate has to be granted as damages in the form of economic cost, even if the ingredients for applying the clause are not made out.

37. The miller has relied on an award dated 9th September 2003, passed by a three-member tribunal in the case of **FCI v. M/s. Chotani Rice Mills** wherein the Tribunal observed as under:

“Penal rate of 1.1/2 times of “economic cost” can be recovered where there are “shortfalls” or “shortages” in paddy or rice in the “National stocks” while milling or returning the milled quantity. Penal rate is applied to cases of misappropriation or conversion. Whether it is criminal offence of misappropriation or the civil wrong of conversion (tort) the owner is deprived of his property.

FCI is claiming 1.1/2 times of the “economic cost” of the paddy which was never given to the mills for milling. The mills did not lift the balance quantity for milling as no release order was issued by FCI and no advance rice was given by the miller in terms of Clause 6. The balance quantity remained in joint custody unmilled and un-lifted. FCI therefore has grounded the claim on the miller’s failure to protect and preserve the “national stock”. But there was no such duty on the miller, as we have said.

Clause 7, 8, 9 and 17 of the agreement apply the penal rate where paddy is given to the miller and the miller converts it to his own use for example, he sells it in open market at a higher rate. Paddy must be found short when the entire

stocks are returned.

Acts of conversion may be of various kinds. The miller may wrongly retain or detain the paddy or wrongly dispose of or make away with it. He may consume it or destroy it. The miller is accountable for giving the requisite quantity of rice for the lifted quantity by him. If he does not give correct and true account of the lifted quantity, he is guilty of the tort of conversion. For example, he sells it to a third party and makes profit. The clauses dealing with penal rate say that the miller shall pay 1.1/2 times the "economic cost" of the paddy unaccounted and found short. Shortages and short falls are the essence of the clauses. Deficiency must be found in the rice delivered after milling qua the quantity lifted by the miller before a claim for damages at 1.1/2 times of "economic cost" case succeed.

In the present case the balance paddy was not issued for milling. It remained in joint custody, as we have said. The miller did not retain any part of paddy or rice given to him for milling. In fact, he returned excess quantity of what he was given."

38. The intervening circumstances of notices for open sale during the currency of the contract go to the root of the matter insofar as it relates to implementation of the contract by the millers. The documents on record do demonstrate that a policy decision was taken not to create distress for the millers due to various reasons, not attributable to the millers and in view of the same the decision for open sale with the preferential right to the millers to buy was taken. The FCI cannot be seen to argue that it is entitled to the price of the unmilled paddy at the rates fixed by it and in addition it is entitled to 1 1/2 times the rate of the paddy in the form of the economic cost. Such a double benefit cannot be granted, especially in cases where the

millers have acted in a bonafide manner.

39. The court cannot lose sight of the fact that awards have to be passed in consonance with public policy. The documents on record show that there were various levels of consultation which went into the decision to sell the paddy by means of open sale. This shows that the Government had reconciled to the fact that the best step to take was to sell in the market and recover the cost of the paddy. Further the FCI was also given a benefit of Rs. 120 crores by the Central Government to compensate for the losses suffered by it. This is evident from letter dated 29th March, 2000.

40. The initiation of arbitration claim against the millers in the light of open sale notices and the correspondence, which is set out in the present case, clearly seems to be an erroneous step by the FCI against the miller and the documents on record shows clearly that even in the settlements entered into by FCI, it did not insist on the 1½ times of the economic cost of paddy. FCI is clearly being selective in the manner in which the arbitration cases are being pursued for more than two decades now. The FCI itself having taken a decision and given the option to the miller to purchase the paddy or having recovered the cost of the paddy by selling in the open market, was clearly in the knowledge of the fact that it had taken a policy decision consciously not to press the claim of economic cost. Despite this, in the arbitration proceedings it raised claims for the same which are totally untenable - except in the case where the millers had indulged in pilferage and siphoning off of paddy. Thus, the claim of 1½ times of the economic cost is not liable to be granted in favour of the FCI, in the facts of the present case.

41. The miller has been awarded a sum of Rs.1,95,638.49/- in terms of its

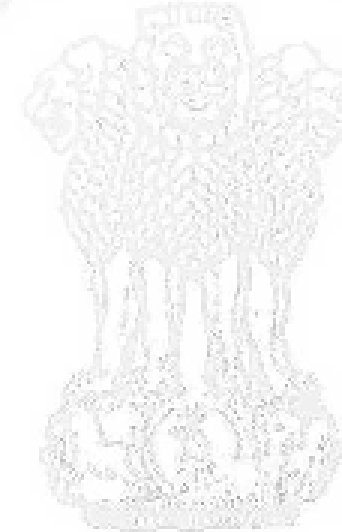
counter claims. The same was towards the various milling charges, stitching charges, security deposit and cost of gunnies. The claim for the said amount was raised by miller for the first time by filing counter claim in the arbitration proceedings. Accordingly, the interest payable to the miller qua the same would be from the date of the award i.e. 24th February, 2011 @ 9% per annum simple interest. The amounts may be paid by the FCI within a period of three months, failing which, interest @ 10% per annum would be liable to be paid.

42. OMP is disposed of.

OCTOBER 23, 2018

Rahul/dk

PRATHIBA M. SINGH, J.



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