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

+ **O.M.P. (COMM) 159/2017**

FOOD CORPORATION OF INDIA

..... Petitioner

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

versus

M/S GIRDHAR RICE TRADERS & ORS.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **27.07.2018**

1. Agreement to sell dated 21st February, 1995 was entered into between the Food Corporation of India (*hereinafter*, 'FCI') and one M/s. Girdhar Rice Traders, Firauzpur Cantt., Punjab (*hereinafter*, 'Girdhar Rice Traders'). The agreement was for supply of paddy and was signed by Mr. Roshan Lal on behalf of Girdhar Rice Traders. The agreement contains an arbitration clause which reads as under:

“ARBITRATION:-

All disputes or differences whatever arising between the parties out of or relating to the agreement meaning and operation or effect of this agreement or the breach thereof shall be settled by arbitration in accordance with the rules of arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the parties. The Senior Regional Manager/Zonal Manager of the corporation shall appoint/nominate arbitrator out of the persons in the panel of arbitrators maintained by ICA. It is a term of this contract that in the event of arbitrator being transferred, vacation of office,

death or inability shall appoint another person out of panel maintained by ICA to act as arbitrators. Such a person shall be entitled to proceed with reference from the stage where it was left by his predecessor.

Provided further that any demand for arbitration in respect of any claim(s) of the miller, under the contract shall be in writing and made within one year of the date of completion or expiry of the period of contract. If the demand is not made within the period, claim(s) of the miller shall be deemed to have been waived off and absolutely barred and the Corporation shall be discharged and released of all liabilities under the contract in respect of these claims.

The cost of the proceeding in connection with arbitration shall be in the discretion of the arbitrator who may make suitable provision for the same in his award.

Subject as aforesaid, the arbitration act, 1940 shall apply to the arbitration proceedings.

The parties hereto have signed this agreement on the day and year first above written.”

2. Controversy arose in respect of the arbitration clause which was contained in the contract between several Millers and the FCI. The matter was finally decided by the Supreme Court of India which vide order dated 17th July, 2003, directed the Indian Council of Arbitration to appoint the arbitrator. The relevant portion of the order of the Supreme Court reads as under:

“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 matters 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 the orders. ”

3. Ld. Counsel for the Petitioner submits that the Respondent was one of the parties to the said litigation. As per the records, which are available from the Indian Council of Arbitration, FCI preferred its claim petition and the same came to be decided by the impugned award dated 9th September, 2011. It is interesting to point out that the memo of parties in the case reads as under:

*“Food Corporation of India
District of office, Malwal Road,
Ferozpur City – 152001.
Punjab*

.....Claimant

Vs.

*M/s Girdhar Rice Mills
C/o. Bal Kishan & Co.
Village-Satia Wala
Near Anaj Mandi, GT Road,
Ferozpur Cantt (PB)*

*Shri Roshan Lal
M/s/ Girdhar Rice Traders,
GT Road, Village Satyawala
Near Chabka Mandir
Ferozpur Cantt (PB)*

..... Respondents”

4. The Arbitrator, however, dismissed the claims on the ground that the Respondents were never served in the matter and the actual party Girdhar Rice Traders was not impleaded in the arbitration proceedings. Relevant portion of the award is set out below:

*“5.2 The Agreement on the basis of which the arbitration proceedings are initiated is between the FCI, Ferozepur and **M/s Girdhar Rice Traders**, Ferozepur Cant through proprietor Shri Roshanlal and not with Ms Girdhar Rice Mills. But, the Claim Statement submitted by the Claimants to the ICA showed the name of the Respondents as **Ms Girdhar Rice Mills**. The covering letter from FCI to the ICA for nomination of an arbitrator, the receipt issued by ICA for the registration fee, the appointment of sole Arbitrator by the Arbitration Committee of the Council and the subsequent proceedings have all been conducted with Respondents name being shown as **M/s Girdhar Rice Mills**.*

5.3 The Respondents never attended the arbitration proceedings. The notices sent to them were returned with remarks that there is no such firm at the given address. The notice published in the news papers was in the name of Ms Girdhar Rice Mills, a firm with which FCI, Ferozepur never entered into any Agreement for storage and milling of paddy. The name of the sole proprietor was not mentioned in this notice.

5.4 In the application dated 16.8.2011 filed by the Claimants it is stated that due to a typographical error, the name of the respondents/sole proprietorship has been recorded wrongly in

memo of parties and order sheets of the proceedings. It is further stated that the correct name of the respondents/sole proprietorship firm is Ms Girdhar Rice Traders. The Claimants have requested the Tribunal 'to put on record the correct name of respondents /sole proprietorship.'"

5. The Arbitrator rejected the entire claim by holding that the actual party to the agreement was not impleaded.
6. A perusal of the claim petition, which is on record and the memo of parties clearly shows that both Mr. Roshan Lal, Girdhar Rice Traders and Girdhar Rice Mills have been made parties. It is possible that the Respondent No.1 is inadvertently described as Girdhar Rice Mills and Respondent No.2 is shown as Mr. Roshan Lal, the proprietor of Girdhar Rice Traders. The Arbitrator seems to have taken an extremely technical view of the matter. The Agreement having been signed by Mr. Roshan Lal, on behalf of Girdhar Rice Traders, he was clearly made a party to the arbitration and even Girdhar Rice Mills can at best be termed as an inadvertent mis-description of Girdhar Rice Traders. The manner in which the Arbitrator has completely rejected the claims, simply by considering that the name is a wrong, reflects an approach which does not comport to a judicial approach.
7. In any judicial or quasi-judicial dispute, the attempt must be to adjudicate the dispute and not dismiss claims on taking a hyper technical approach. The Petitioner could have been given an opportunity to amend the memo of parties if the error was considered to be such a serious one so as to result in dismissal of the claims. But dismissing the claims in this manner,

especially when the Supreme Court had directed that the matter, ought to be adjudicated **on merits** shows complete disregard to the arbitral process itself. Due to this hyper technical approach the matter has remained pending since 2003 when the ICA was directed to appoint an arbitrator. In a contract involving supply of paddy where the claims and the evidence was on record, the Ld. arbitrator's approach is cavalier to say the least. The claims ought to have been adjudicated on merits. The impugned award is accordingly set aside.

8. The Claimant is at liberty to amend the memo of parties. Fresh notice may be issued and the matter would be decided on merits, in accordance with law as directed by the Supreme Court. The arbitration shall proceed and be disposed of expeditiously, within a period of 6 months. The arbitral record may be transmitted back to the Indian Council of Arbitration for nominating an arbitrator to adjudicate the dispute. The Claimant shall be given benefit of Section 43(4) of the Act.

9. Petition is disposed of.

PRATHIBA M. SINGH, J.

JULY 27, 2018/dk