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

Date of Decision: 11th September, 2018

\+ **O.M.P. 155/2012**

FOOD CORPORATION OF INDIA ..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior Advocate with Mr. Mohan Lal Sharma, Advocate.

versus

M/S GURU NANAK RICE AND GENERAL MILLS..... Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Food Corporation of India *(hereinafter 'FCI')* has filed the present petition challenging the award dated 6th August, 2011 whereby all the claims of FCI had been rejected.

2. The chronology of facts and events are that an agreement was entered into on 10th October, 1994 between FCI and Guru Nanak Rice & General Mills, Jagraon – Respondent (*hereinafter, 'Respondent'*). As per the said agreement, the Respondent was to store paddy in its mill, and mill the same. After undertaking the process of milling, the resultant rice was to be supplied to FCI. The terms and conditions as contained in the contract are as under: -

> "**AGREEMENT FOR STORAGE-CUM-MILLING OF FCI PADDY STORED IN MILLERS PREMISES INTO CONVENTIONAL RATE/PERIODICAL RICE**."
>
> *"1. The miller shall be supplied paddy available at Jagraon as per the arrangements agreed upon by the miller and accepted by the Corporation.*

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 threes 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.

3. *The Miller shall undertake shelling of paddy at FCI applicable custom milling rate which will include all services as per details given below:-*

SERVICES :

a) Lifting paddy from storage points in the mills, loading into trucks and carriage to the mills.
b) Drying of paddy;
c) Katal of paddy bags before dehusking;
d) Dehusking of paddy;
e) Filling of bags of rice prior to dara-making;
f) Dara making of rice bags and filling / sewing of bags;
g) Transportation of milled rice to railway stationed loading into wagons, inspection, weighment and sampling as per directions of the Corporation; or transportation of milled rice to the storage points to the Corporation including those of CWC/SWC hired godowns as per directions of the Corporation, unloading of trucks and delivery after inspection, weighment, sampling at scale point at the cost of miller.

Name of	*Name of*	*Variety of paddy*	*Weight of the*

District	*the storage centre*		*paddy in qtls. For which contract is to made for storage and milling.*
1	*2*	*3*	*4*
Ludhiana	*Jagraon*	*Fine*	*35000=22750-00*
Out-turn ratio for conservation of paddy into rice	*Milling Rate*	*Qty. of paddy out of which (col.4) rice will be manufactured*	
5	*6*	*7*	
P 67%	*9 Rs.*	*14937-65 22295 eligible*	

……

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(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.

….

9(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 the 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	*28%*

However, in case of 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.

…

16(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."

3. A total of 21865.35 quintals in 33639 bags of paddy was stored in the Respondent's mill for the purposes of milling. The total paddy milled was to the tune of 12320.0062 quintals in 19340 bags. The remaining paddy continued to be stored in the Respondent's premises. It was neither milled nor returned to FCI. The contract was for a period of around 4 months i.e., from 10th October, 1994 to 28th February, 1995. The contract was to be completed by 28th February, 1995 which was extended till 31st May, 1995. However, since the Respondent did not complete the milling, the left-over paddy was considered to be sold and a sum of Rs.28,55,160.00/- was adjusted from the said sale. A huge loss was caused to the FCI because of which FCI invoked the arbitration clause in the agreement which is as under:

"21. ARBITRATION:-

All the disputes or differences but ever 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 the arbitration in accordance with the rules of arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding of the parties the Senior Regional Manager/ Zonal Manager of the corporation shall appoint/ nominate arbitrator out of person in the penal of arbitrators maintained by ICA. It is the terms of this contract that in the event of arbitrator being transferred, vacation of office, death or in ability shall appoint another person out penal maintained by ICA to act as arbitrators. Such a person shall be entitled to proceed with reference from the stage where is 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 mad within one year of the date of completion of 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 proceeding in connection arbitration shall be the discretion of the arbitrator who may make suitable provision for the same in his award…."

4. Thereafter, FCI issued notice dated 23rd January, 1998 to the Respondent and sought payment of a sum or Rs.53,26,241/-. The claims raised by FCI are as under: -

SL. NO.	*DETAILS*	*FINE QUALITY*	
		BAGS	*QTY.*
1.	*Paddy stored in the Mill premises of the respondent as per the agreement*	*33639*	*21865-35*
2.	*Paddy milled upto 31.05.95 (Raw & Par*	*19340*	*12320.00.062*

	boiled)		
3.	*Rice received upto 31.05.95 (Raw & Par boiled)*	*8750*	*8299.75.000*
4.	*Storage loss @ 2% driage on paddy milled*		*251.42.000*
5.	*Balance paddy as on 01.06.95*	*14299*	*9293.93.938*
6.	*Cost of balance paddy @ 837.17 of fine quality*		*Rs.77,80,598.86*
7.	*Sale of paddy after 01.06.95 and amount realized*		*8201Qtl. Rs.28,55,160.00*
8.	*Amount recoverable from the respondent*		*Rs. 49,23,438.86*
9.	*Rice received after 31.05.95 in terms of paddy*		*466,60qtl*
10.	*Value of paddy*		*Rs. 25,719.25*
11.	*Amount recoverable on account of quality cut/gunny bags retained/sales tax/ income tax etc.*		*Rs.2,13, 261.63*
12.	*Total amount recoverable*		*Rs.51,36,700.49*
13.	*Amount payable to the miller towards milling charges Stitching charges*		*Rs. 1,17,147.75* *Rs. 11,562.50*
14.	*Cost of gunnies*		*Rs. 2,00,000.00*
15.	*Security Amount*		*Rs. 30,000.00*
16.	*Net amount recoverable as on 01.06.1995*		*Rs.45,27,279.99*

5. Vide the said letter, FCI called upon the miller i.e., the Respondent

herein, after invoking clause 16(c) that the Respondent is liable to pay 1½ times the economic cost of the paddy/rice which comes to Rs.45,27,279.99/- along with interest. Claim statement was filed by FCI before the Indian Council of Arbitration as per which it was acknowledged by FCI that the total sum recoverable from the miller for the unprocessed un-milled paddy was Rs. 45,27,279.99/- from which the expenses payable to the Respondent were to be deducted. Thus, FCI raised a claim before the Arbitrator to recover the amounts due.

6. A perusal of the award reveals that the only reasoning given by the arbitrator is that FCI had failed to prove the claim and the quantum by documents and that the Claimant had also not explained the avoidable delay in arbitration. The date of the contract is 10th October, 1994. The original date of completion of the contract was 28th February, 1995 but the unsold paddy was finally sold after 31st May, 1995. The FCI issued notice dated 19th/22nd July, 1997 and another notice on 6th November, 1997. The claim petition was filed before the Indian Council of Arbitration on 20th February, 1998 along with the registration fee. The Indian Council of Arbitration refused to proceed with the arbitration which finally resulted in the FCI taking the matter right till the Supreme Court. Vide order dated 10th February, 2000, the arbitration petition seeking appointment of arbitrator was dismissed by this Court. However, on 17th July, 2003, the Supreme Court allowed the appeals of the FCI and directed the Indian Council of Arbitration to appoint the arbitrator. The said order of the Supreme Court reads as under:

> *"Keeping into consideration all these aspects, we consider it just and more appropriate, proper and*

> *reasonable â\200\223 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 these orders.*
>
> *The appeals are allowed and accordingly disposed of as indicated above. The respective parties will bear their costs."*

7. Thus the arbitrator who was appointed was to decide the matter in accordance with law and not to simply refuse to take the claim into consideration. The award is completely unreasoned. It merely rejects the entire claim with one sentence *"the burden to prove its case is very heavy on the claimant. In its affidavit & supporting documents the claimant has not been able to prove the clauses of agreement & quantum of claim by evidence, oral or documentary"*. Such an award is wholly unreasoned and unsustainable in law. The award is accordingly set aside.

8. The OMP is allowed in the above terms.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 11, 2018
Rekha