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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 21.02.2018

RFA (OS) 22/2013

TINNA OVERSEAS LIMITED Appellant

versus

FOOD CORPORATION OF INDIA Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Anupam Laldas, Advocate with Mr. Krishanu Barua, Advocate

For the Respondent : Ms. Kiran Suri, Senior Advocate with Mr. Purvesh Buttan, Ms. Urvashi Garg and Ms. Aishwarya Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 read with Section 10 of the Delhi High Court Act, 1966, assails a judgment and decree dated 30.08.2012 passed by a learned Single Judge of this Court in Civil Suit (OS) No.1894/1998 (for short 'the subject suit'), whereby the same was dismissed in favour of the

respondent/Food Corporation of India.

2. The facts as are necessary for the determination of the present appeal are adumbrated as follows:-

- a) The respondent entered into contracts with various persons for the sale of fine and superfine rice.
- b) The contracts required such buyers to export the rice.
- c) The appellant was one such buyer.
- d) The parties herein entered into a contract dated 25.04.1995 (Annexure A-4 Colly)(Exhibit D-2), (hereinafter referred to as 'the subject contract')
- e) It was the case of the appellant that on the basis of the subject contract with the respondent, the former entered into further contract with foreign buyers.
- f) The appellant also stated that pursuant to the terms of the subject contract, earnest money to the extent of 1 per cent of the total value of quantity was deposited with the respondent in the month of June, 1995.
- g) It is an admitted position that the stocks of rice were lifted by the appellant in the months of August, September, October and

November of the year 1995.

3. Learned counsel appearing on behalf of the appellant would urge that the contract between the parties was concluded simultaneously with the deposit of the earnest money, and the respondent could not unilaterally increase the price for the period of 30 days thereafter, as has been done in the present case.

4. It is urged on behalf of the appellant that the act of respondent in raising the price, after having agreed upon a fixed price, amounts to unjust enrichment and the appellant is entitled to recover the excess amount received by the respondent under the subject contract.

5. The principle of *contra proferentem* is also pressed into service on behalf of the appellant to urge that if the clauses of the contract permit more than one interpretation, the one that favours the buyer must be enforced by the Court.

6. To encapsulate briefly, it is the submission on behalf of the appellant that once the earnest money deposit of 1 per cent of the total value of quantity had been made, the respondent was bound to deliver the rice to him at the price prevalent on the date of the said deposit, and the respondent could not charge the price which obtained on the date of delivery of the rice.

7. On the contrary, Ms. Kiran Suri, learned Senior Counsel appearing on behalf of respondent, whilst supporting the impugned judgment and decree in its entirety would invite our attention to the relevant clauses of the subject contract to urge that clause (c) in particular, which is an integral part thereof, clearly provides that rates as fixed on the date of delivery of rice would be applicable.

8. In this behalf, it is urged that the price for the sale of rice was fixed by the Government of India, who had formulated the policy therefor and not by the respondent.

9. In the subject suit, the following issues were struck on 13.08.2003:-

- “1. Whether the plaintiff is entitled to recover a sum of `3,16,40,408.22 in light of the averments made in the plaint? OPP
2. Whether the plaintiff is entitled to interest on the amounts due to it? If yes, at what rate and to what amount? OPP
3. Whether the defendant is entitled to increase the price in light of the Government of India instructions and contrary to the contract between the parties? OPD
4. Relief.”

10. In order to determine the issues, evidence was led by the parties, principally on the terms of the subject contract.

11. The relevant clauses of the subject contract are extracted as follows:-

“No.J/1 (6)/94/TOL/S.III
M/s Tina Overseas Ltd.
New Delhi

APRIL 25, 1995

Sub: Offer of Fine (raw/boiled) and Superfine (raw/boiled) rice by FCI for same under Open Market Sales Scheme for purposes of exports.

Ref: Your Telex/FAX/Letter No.

Dated 18/4/95

Dear Sirs,

This is in context of your reference(s) captioned above wherein you have expressed interest for purchase of rice-fine (raw/boiled) and/or superfine (raw/boiled) under Open Market Sales Scheme (OMSS) from FCI for purposes of exports. In this regard, you are informed that while FCI has decided sale of FCI rice to prospective buyers aiming for exports and would consider your request as well as on merits subject to your response which should reach latest by 4th May, 1995 if you still have interest in purchase of rice from FCI.

.....

3. Above information/documents along with Extent Money to the extent of 1% (one per cent) of the total value of the quantity which you intent to purchase from FCI should accompany the offer letter in the form of Bank Draft drawn in favour of “Food Corporation of India” payable at New Delhi and drawn on any nationalized scheduled bank preferably State Bank of India.

4. Please note that your replies should reach positively latest by 4th May, 1995 failing which it will be presumed that you are no more interested in purchasing rice from FCI. It may also be noted that acceptance of Earnest money by FCI would in no way commit the FCI management to accept your offer which would be considered on merits subject to availability of stocks and other relevant factors.

5. The prices meant for sales of rice by FCI under the

Open Market Sales Scheme for purposes of exports are enclosed – Annexure – ‘I’. Kindly note that FCI will be offering stocks of rice, if any, subject to availability on “as-is-where-is” basis without any guarantee with regard to specifications. FCI will, however, offer rice of 1994-95 crop ‘A’ & ‘B’ categories to buyers aiming for exports. Deliveries will be given ex-FCI depots on FOT (free on truck) basis and you will be required to lift stocks within a free period of “15 FCI working days” failing which FCI will levy storage charges of Paise 10 per Bag/per Day or part thereof subject to a minimum of 40 paise per bag. These charges will be recovered in respect of the entire quantity of the unlifted stocks at the end of the free period before the delivery of such stocks is actually effected. FCI would try to cooperate in giving deliveries by operating separate delivery points for you and can give before or after office hours also subject to your meeting the OTA cost of Staff detained/deployed.

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ANNEXURE-‘I’

STATE WISE PRICES MEANT FOR SALE OF RICE BY FCI UNDER OMSS FOR PURPOSES OF EXPORTS

Sl. Name of the State/PRICE OF FINE/SUPERFINE No.Port Towns EXPORT ORIENTED OPEN SALE SCHEME (RATE: RS/PER MT)		
	FINE (RAW/BOILED)	SUPERFINE (RAW/BOILED)
.....		
13(a) A.P. Kakinada/Vizag*	6400	6700
(b) Rest of A.P.	6300	6600

.....

NOTES

1. Above rates are effective from 24.04.95 and would be

valid till further orders

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- a)
- b)
- c) **Rates applicable on the date of delivery would be applicable. This will be condition of sale of rice by FCI**.
- d) Sale of rice by FCI will be only on pre-payment basis.”

(Emphasis supplied)

12. Having construed the terms of the subject contract, the learned Single

Judge opined as follows:-

“6. Once a written contract is entered into in writing between the parties, Sections 91 and 92 of the Evidence Act, 1872 provide that nothing can be pleaded so as to contradict or vary the terms of the written contract. Also it is settled principle of law that a contract has to be read as a whole. No doubt as per Para 3 one per cent of the earnest money deposit was taken on the basis that the delivery was to be effected within one month, however, it is not the case of the plaintiff that the defendant was bound to deliver the stock within one month. Such could also not be the case as the contract does not require deliveries to be compulsorily made in one month. There is no such pleading and therefore there is no such evidence on behalf of the plaintiff. What is pleaded and urged on behalf of the plaintiff is only that the prices are fixed because fixed prices are stated in Annexure 1 and the prices are also fixed because of the aforesaid para 3 of the contract, Ex.D2 pertaining to earnest money deposit. Another reason for claiming that the price should not be unilaterally varied by the defendant is that the plaintiff had entered into further contracts with the buyers abroad and therefore the plaintiff cannot be put at a disadvantage.

In my opinion, the arguments as urged on behalf of the plaintiff carry no weight. Once the contract is read as a whole, Clause (c) specifically provides that the rates which would be applicable would be those on the date of delivery i.e. the rates

would be as prevalent (i.e. variable) on the date of delivery of the rice. I thus really fail to understand as to how the plaintiff can argue that it was a fixed price contract. The prices stated in Annexure I were only indicative, and this becomes clear not only from Clause (c) stated above, but the Note 1 of Annexure I which specifically states that the rates would be applicable only till further orders i.e. the rates are tentative and changeable under further orders. Merely because the plaintiff has entered into further contracts with buyers abroad cannot mean that the terms of the contract, Ex.D2 entered into between the plaintiff and the defendants can be contradicted by the plaintiff. In fact if the plaintiff was prudent, it would not have entered into the fixed price contracts with the buyers abroad. At this stage, I must hasten to add that I am presuming that the plaintiff entered into fixed price contracts with the foreign buyers, inasmuch as, except making an oral statement in the pleadings and in the depositions, the contracts with the foreign buyers have not been filed and proved to show that the contracts with the foreign buyers were at fixed prices. In any case, the contracts of the plaintiff with the foreign buyers have no bearing for the interpretation of the contract, Ex.D2 entered into between the plaintiff and the defendant.”

13. From a perusal of the above extracted paragraphs, the following findings are reflected:-

1. Although, as per para 3 of the subject contract one percent of the earnest money deposit was taken from the appellant on the basis that the delivery was to be effected within one month, it is not the case of the appellant that the respondent was bound to deliver the stock within one month. Even otherwise, that could not have been the case of the appellant, since the subject contract also doesn't require for the deliveries to be compulsorily made within one

month. Further, since there is no such pleading, no such evidence has been lead by the appellant.

2. It is a settled principle of law that a contract has to be read as a whole. The prices stated in Annexure I to the subject contract are only indicative, since Clause (c) thereof specifically provides that the rates which would be applicable would be those that were prevalent on the date of delivery of the rice. Even Note '1' of Annexure I specifically states that the rates would be applicable only till further orders i.e. the rates are tentative and changeable/variable under further orders.
3. The assertion that the appellant had entered into further contracts with buyers abroad cannot be of any consequence, so as to mean that the terms of the subject contract could be interpreted or contradicted thereby by the appellant.
4. In any event, even the purported contracts with the foreign buyers had neither been filed along with the plaint nor proved in the suit.

14. In this view of the matter, the learned Single Judge proceeded to determine Issue Nos.1, 2 and 3 against the appellant and in favour of the respondent.

15. Having perused the entire record, as well as, the impugned judgment, and after hearing counsel for the parties, we are of the considered view that the submissions made on behalf of the appellant hold no water and are devoid of any merit.

16. In our view, a cogent reading of the relevant clauses of the subject contract clearly manifest that the prices for the sale of rice were to be determined on the date of delivery; which bargain was fundamental to the contract entered into between the parties. The prices stated in the subject contract were only indicative and the rates expressed were valid till further orders, which conclusion is buttressed by a plain reading of Note '1' appended thereto.

17. Even otherwise, clause (4) of the subject contract clearly provided that the acceptance of earnest money by the respondent would in no way commit it to accept the offer, which would be considered on merits, subject to availability of stocks and other relevant factors.

18. Clause (5) of the subject contract further stipulated that stocks of rice were offered subject to availability on "as-is-where-is" basis, without any guarantee with regard to specifications.

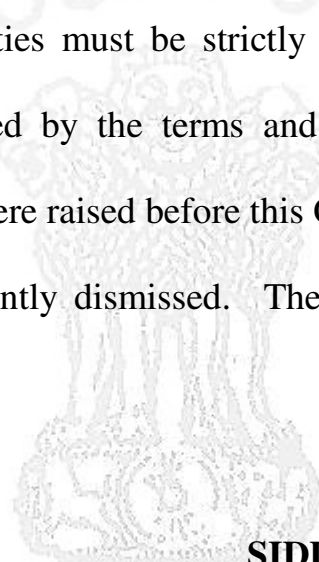
19. In this view of the matter, the submission made on behalf of the appellant that the prices were fixed on the date of the deposit of the earnest money, is untenable and contrary to the express terms of the subject contract.

20. In relation to the submission made on behalf of the appellant, invoking the principles of *contra proferentem*, it is observed that neither were there

any pleadings in this behalf before the learned Single Judge nor was an issue struck in relation thereto. Similar is the case with the assertion made on behalf of the appellant before us in relation to unjust enrichment. In this behalf, it is trite to state that the appellant cannot be permitted to make out a case in appeal, which has neither been pleaded nor canvassed in the suit proceedings that culminated with the impugned judgment and order.

21. In our view, the parties must be strictly held to the bargain struck between them, as evidenced by the terms and conditions of the subject contract. No other points were raised before this Court.

22. The appeal is resultantly dismissed. There shall be no order as to costs.



**SIDDHARTH MRIDUL
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

FEBRUARY 21, 2018
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