

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

+ O.M.P. 1670/2014 & I.A. No.26273/2014 (for summoning of record of Arbitrator)

FOOD CORPORATION OF INDIA Petitioner
Through: Mr. Rajeev Sharma, Advocate.

Versus

M/S ASHOK RICE MILLS & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

30.01.2015

1. This petition, under Section 34 of the Arbitration and Conciliation Act, 1996, seeks setting aside of the arbitral award dated 4th September, 2014 of the sole Arbitrator (nominated by the Indian Council of Arbitration in accordance with the arbitration clause in the agreement between the parties) to the extent the same rejects the claims of the petitioner and allows the claims of the respondents.

2. The petition came up before this Court first on 23rd December, 2014, when after hearing the counsel for the petitioner on the aspect of admissibility / entertainability of the petition, orders were reserved.

3. Though on a reading of the petition and on hearing arguments of the counsel for the petitioner, it appeared that no ground for setting aside of the award within the meaning of Section 34 of the Act and specially in accordance with the judgments of the Division Bench of this Court in *Delhi Development Authority Vs. Bhardwaj Brothers* MANU/DE/1753/2014 and

in *State Trading Corporation of India Ltd. Vs. Toepfer International Asia Pte Ltd.* MANU/DE/1480/2014, is made out but on further consideration, I am of the view that a case for admitting and entertaining the petition and issuance of notice thereof to the respondents, is made out.

4. I may record that OMP No.1651/2014, also for setting aside of an arbitral award, though of a different Arbitral Tribunal but on nearly identical facts, had also come up before this Court on 22nd December, 2014 and in which also orders were reserved and in which also notice is being issued today.

5. In view of the detailed reasons given in order pronounced today in OMP No.1651/2014, it is not deemed expedient to record reasons which have prevailed for entertaining this petition. A copy of the order in OMP No.1651/2014 be placed on file of this petition as well.

6. Suffice it is to state that the arbitral award, *prima facie*, is incomprehensible, disjointed and does not give reasons for dismissing the claims of the petitioner and for allowing the claims of the respondents. It also *prima facie* appears that the arbitral award is *de hors* the pleadings of the parties. For instance, while the claim of the petitioner was for compensation, in accordance with the formula provided in the agreement between the parties, for paddy left unmilled into rice by the respondents and the respondents in their reply admitted having not milled the entire quantity of paddy, the arbitral award proceeds on the premise of the entire quantity of paddy having been milled into rice and delivered by the respondents to the petitioner.

7. Clearly (of course *prima facie*), an attempt to award in favour of respondents is evident and which, I have in order in OMP No.1651/2014 held enough to invoke Section 34(2)(b)(ii).
8. Resultantly, issue notice to the respondents returnable on 25th March, 2015.
9. The arbitral record be also requisitioned by the said date.

RAJIV SAHAI ENDLAW, J.

JANUARY 30, 2015

bs