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

+ **ARB.P. 446/2017 & IA No.14155/2017**

PAWANI SEEDS

..... Petitioner

Through: Counsel for the petitioner (appearance
not given).

versus

**THE CHAIRMAN CUM MANAGING DIRECTOR, NATIONAL
SEEDS CORPORATION LTD, & ANR.**

..... Respondents

Through: Mr Yashvardhan and Mr Ankit Goel,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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08.03.2018

1. The petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996, *inter alia*, praying that an Arbitrator be appointed to adjudicate the disputes that have arisen between the parties in relation to an agreement dated 29.11.2011 (hereafter 'the Agreement').

The Agreement contains an arbitration clause, which is set out below:-

“8. In the event of any question/dispute/difference arising between NSC and the Seed Producer on any matter covered by these terms and conditions or arising directly/indirectly there from or connected with these terms and conditions in any manner the matter shall be referred to the sole Arbitrator who may be appointed by the Managing Director/Chairman NSC or by any competent officer who at the relevant time is occupying the highest office in NSC and has been delegated with such powers. The seed producer shall have no objection in this regard. Also the court of Delhi/New Delhi along shall have jurisdiction to adjudicate hereon.”

2. The respondent had issued a notice inviting tenders (NIT) dated 26.09.2011 for supply of certified seeds of Paddy, Blackgram, Groundnut & Bengalgram. The petitioner submitted his offer pursuant to the NIT, which was accepted and the parties entered into the Agreement. The NIT also includes an arbitration clause.

3. There is no dispute as to the terms of the Agreement or that it includes an arbitration clause. The only objection taken by the respondent is with regard to the limitation; according to the respondent, the present petition is barred by limitation.

4. The disputes involved in the present petition relates to the price payable for seeds supplied by the petitioner to the respondent. The petitioner claims that he is entitled to an additional sum of ₹750/- per bag amounting to ₹28,14,750/-.

5. The petitioner has placed on record a letter dated 20.12.2012, whereby the petitioner had called upon the respondent to pay the balance amount which, according to the petitioner is due and payable by the respondent. The petitioner claims that he did not receive any response to the said letter.

6. The petitioner has also placed on record another letter dated 29.03.2014, which indicates that the respondent had deducted a sum of ₹30,42,000/- from the balance lying to the credit of the petitioner towards penalty for non supply of certain seeds. By the aforesaid letter, the petitioner once again called upon the respondent to immediately make the payment of ₹28,14,750/- failing which appoint a Sole Arbitrator to decide

the disputes between the parties. The petitioner claims that the said letter was also not responded to. Thereafter, the petitioner sent another letter dated 19.06.2014 once again calling upon the respondent to appoint an arbitrator in terms of Clause 3 of the NIT. The petitioner claims that he did not receive any response to this letter as well.

7. After more than two and a half years had elapsed, the petitioner sent yet another letter dated 02.09.2016 once again calling upon the respondent to settle the claims to release the differential amount of ₹28,14,750/-. This was followed by a legal notice dated 03.01.2017, whereby the petitioner once again called upon the respondent to appoint an arbitrator. Since, the petitioner had not received any response to the aforesaid request for appointment of an arbitrator, the petitioner has filed the present petition.

8. It is seen that although the petitioner had requested for an arbitrator to be appointed as early as on 29.03.2014, the petitioner took no steps thereafter, for appointment of the Arbitral Tribunal. The present petition was filed on 29.05.2017, that is, more than three years after the petitioner's request for Arbitrator had not been acceded to.

9. In this view, it is apparent that the present petition is barred by limitation. The same is, accordingly, dismissed. The pending application is also dismissed.

VIBHU BAKHRU, J

MARCH 08, 2018
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