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

+ **FAO (OS) (COMM) 96/2019**

NATIONAL SEEDS CORPORATION LTD Appellant
Through: Mr. Arvind Nayar, Senior Advocate
with Mr. Yashvardhan, Ms. Kritika
Nagpal, Ms. Smita Kant and Ms.
Mallika Kamal, Advocates.

versus

INTERNATIONAL PANACEA LTD Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE MANOJ KUMAR OHRI

% **ORDER**
29.04.2019

CM APPL. 19696/2019 (for exemption)

1. Allowed, subject to all just exceptions.

FAO(OS) (COMM) 96/2019 & CM APPL. 19695/2019 (for stay)

2. The challenge in the present appeal is to an order dated 29th January 2019 of the learned Single Judge dismissing O.M.P. (COMM.) NO. 399/2017 which was petitioned under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') filed by the Appellant National Seeds Corporation Ltd. (NSC) against an Award dated 11th July 2017 of the sole Arbitrator.

3. The issue involved is a short one viz., whether the learned Arbitrator was

right in interpreting the payment clause in the contract between NSC and Respondent which obliged NSC to pay the Respondent money for the seeds supplied by the Respondent to the State of Bihar “within 15 days from the date of the satisfactory execution and receipt of the payment” by the NSC from the Purchaser i.e. the State of Bihar. The learned Arbitrator in the impugned Award noticed the difficulty in adopting a literal interpretation of the above clause, as put forth by NSC viz., that it is not obliged to pay the Respondent anything till such time it received money from the State of Bihar. Therefore the word “and” separating the two limbs of the above clause was read by the learned Arbitrator as “or.” The learned Single Judge has concurred with the learned Arbitrator.

4. Mr. Arvind Nayar, learned Senior counsel appearing for NSC assails the following findings of the learned Single Judge in the impugned judgment, which according to him tantamounts to re-writing the payment clause in the contract which was impermissible for the Arbitrator to have done:

“29. Since it is not disputed on behalf of the petitioner that the respondent has no privity of contract with the State of Bihar, the word "and" would have to be read as "or" to make the sense of when the period of 15 days would commence in a situation where the date of execution of the order was different from the date of receipt of payment by the petitioner from its purchaser.

30. Besides this, what is clear, at least, to my mind, is that once parties use the expression that "before that party will not press hard to release the payment" it was intended not to insist on payment till such time 15 days expired from one of the two determinable dates i.e. the date of satisfactory execution of the order or the receipt of payment by the petitioner from its purchasers.

31. It is clear that the intent was not that the respondent will not

ask for payment till such time petitioner was to receive the payment from its purchaser.

32. Therefore, looked at from any angle one cannot but agree with the learned Arbitrator that the intent of parties was not to reach a situation where if the petitioner was not able to receive any money from its purchasers, the respondent would be left high and dry.”

5. Having considered the submissions of Mr. Nayar and having examined the impugned judgment of the learned Single Judge, this Court is not persuaded that the view taken by the learned Arbitrator was not a plausible one and that it was required to be interfered with under Section 34 of the Act by the learned Single Judge.

6. The appeal is accordingly dismissed. The pending application is also dismissed.

S. MURALIDHAR, J.

MANOJ KUMAR OHRI, J.

APRIL 29, 2019

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