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

\+ O.M.P. (COMM) 454/2019, I.As. 14854/2019, 14857/2019, 14858/2019 & 14859/2019

JINDAL GREEN CROP INTERNATIONAL PVT. LTD

..... Petitioner

Through: Mr. Jayant Mehta and Mr. Vijay Kasana, Advs.

versus

DELHI STATE CONSUMERS CO-OPERATIVE FEDERATION LIMITED

..... Respondent

Through: Ms. Anju Bhattacharya and Ms. Deepika Kumari, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **23.10.2019**

I.A. 14858/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

I.A. 14854/2019 (for delay)

This is an application filed by the applicant / petitioner seeking two days delay in filing the petition.

For the reasons stated in the application, the delay of two days in filing the petition is condoned.

Application stands disposed of.

I.A. 14859/2019 (for delay)

This is an application filed by the applicant / petitioner seeking 8 days delay in re-filing the petition.

For the reasons stated in the application, the delay of 8 days in re-filing the petition is condoned.

Application stands disposed of.

O.M.P. (COMM) 454/2019

1. The challenge in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 is, to an award dated June 12, 2019 passed by the learned sole Arbitrator, whereby the learned Arbitrator has allowed the claim to the respondent herein for Rs.4,44,34,359/- with interest @ 12% per annum from September 10, 2015 till the date of payment.

2. The facts as noted from the record are that the respondent herein, Delhi State Consumer Cooperative Federation Limited, who was the claimant before the learned Arbitrator had entered into a contract with Army Purchase Organisation (in short 'APO') for supply of DalArhar and Rajmah. That for due performance of the contract, the respondent entered into an agreement with the petitioner for supply of the stocks to be tendered directly on behalf of the respondent to the APO. The payment for the same was made by the APO to the respondent herein on the bills raised by the respondent. The respondent deducted 5% of the amount and paid the balance to the petitioner herein. It is noted that the APO wrote to the respondent that some of the materials supplied by the petitioner were of poor quality / were not meeting quality parameters and had gone bad during the warranty period to the tune of Rs.7,30,60,092/- and demanded refund of the same. The APO subsequently adjusted / withheld payments amounting to Rs.2,86,25,733/- out of payments due against further / new supply made to them resulting in net due of Rs.4,44,34,359/-. The failure on the part of the petitioner to refund the amount, resulted in the legal notice got issued by the

respondent to the petitioner.

3. In response to the legal notice dated January 13, 2017, a reply dated March 01, 2017 was received by the respondent from the counsel for the petitioner. In the said reply, no specific counter claim detailing any alleged dues from the respondent was made. The fact remains that the petitioner failed to make the payment of Rs.4,44,34,359/-. This resulted in the respondent invoking the arbitration clause contained in the agreement vide letter dated October 25, 2017. The learned sole Arbitrator was accordingly appointed, who initiated the proceedings on November 25, 2017.

4. The petitioner herein had also filed a counter claim. The counter claim was rejected by the learned Arbitrator. Insofar as the claims are concerned, the learned Arbitrator has held as under:

> *"(1) It is undisputed fact that goods supplied by the Respondent on behalf of the Claimant to the APO had gone bad during warranty period to the tune of Rs.7,30,60,092/- against which APO had recovered/adjusted a sum of Rs. 2,86,25,733/- out of payment due against further/new supply made to them and balance sum of Rs.4,44,34,359/- was duly outstanding/recoverable from the Respondent which the Respondent neglected and failed to pay despite of repeated communication/demands made, and legal notice duly served upon the Respondent and only vague, evasive pleas were made to resile its liability.*
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> *(2) As per the documents annexed with the claim, it is clear that goods gone bad worth to the tune of Rs.7,30,60,092/- and after adjusting amount of Rs.2,86,25,733/-, a sum of Rs.*

4,44,34,359/- was due and payable by the Respondent to the Claimant on account of poor quality of goods supplied in total disregard to the stipulated parameters as contained in the supply order.

(3) Parties were dealing with each other from quite a long period and the running books of account were maintained by both the parties. Each year after conclusion/ending of the financial year, net statement of account is made as per the statutory accounting practices. The period relevant for the present- dispute is financial year 2014-2015 and till 2017 when the demand' was raised by the Claimant, no legal, tenable objection was raised by the Respondent to substantiate its alleged plea to succeed non-payment of dues. During the proceedings, besides making vague and bald pleas to avoid its liability, no solid legally tenable documentary/otherwise evidence has been placed by the Respondent for rejection of amount claimed by the Claimant. Moreover, the claim of the Claimant is based on the statement of account made on the basis of communications received from APO about rejection of goods and same is duly backed by the sworn affidavit of the Claimant.

(4) As per the statement annexed with the claim, it is beyond doubt that claimed amount of Rs. 4,44,34,359/- was refundable/due & payable by the Respondent to the Claimant on account of its failure to perform the contract as per the terms and conditions although full payment was received by it from

the Claimant. The Respondent is not permitted to· keep changing its contentions for its failure to supply the contracted goods as per the standard and parameters fixed by the APO to wriggle out of its liability. Moreover, after the goods were gone bad during the warranty period by lifting the goods unilaterally sue-moto without even intimating the Claimant, itself shows that there was non-compliance of quality parameters for which the Respondent cannot be permitted to take advantages of its own wrong.

(5) In the circumstances, besides making untenable technical pleas to derail the proceedings, Respondent have miserably failed to discharge its liability, therefore Claimant claim of Rs. 4,44,34,359/- is accepted and allowed.

(6) In addition thereto, although the Claimant has claimed interest @ 15% on the claimed amount, keeping in view prevailing bank lending rate etc., interest@ 12% per annum is granted on the amount outstanding as detailed in the statement of account· (C3 & C4 of the claim) due/payable by the Respondents till date from 10.09.2015 on which date the claim was lodged by the Claimant on the Respondent. Further, the Respondent will also be liable for further interest on the claim amount and at such rate till discharge of its liability."

5. It is the submission of Mr. Jayant Mehta, learned counsel appearing for the petitioner that the goods of the required quantity and quality was supplied to the APO, who had accepted the same. Before accepting the

same, various quality tests were conducted by the buyer i.e. APO and therefore, the money was also released by the respondent to the petitioner. Furthermore, the quality and life of the goods, depends on the storage / warehouse conditions. Once the goods have been supplied to the respondent, it is for the respondent and its buyer to store them properly and not the petitioner.

6. It is the case of the petitioner that on inspection of the warehouse, it was found that they were not stored properly by the buyer and for that reason the quality had deteriorated. It is also his submission that the contract between the parties stood completed and therefore, the respondent and its buyer may deal with the goods in accordance with their respective contracts without fastening the liability on the petitioner.

7. He submits that the respondent assured the petitioner that appropriate proceedings in accordance with the contract will be contested with the APO but the petitioner did not take any action. In other words, it was the obligation of the respondent to contest the claim of the buyer that quality of the goods were inferior as the petitioner had no *locus standi*. That apart, it is the endeavour of Mr. Jayant Mehta to contend that the APO, till date, has not initiated any proceedings against the respondent for recovery of the money. Till such time, the APO initiates the proceedings against the respondent and the liability is determined, the respondent could not have initiated the claim proceedings against the petitioner herein. In other words, the petitioner cannot be directed to pay what the respondent is not liable to pay to the APO. Hence, the claim was premature and was liable to be rejected.

8. On the other hand, Ms. Anju Bhattacharya, learned counsel for the

respondent has drawn my attention to pages 205 onwards to contend that the APO has written to the respondent about the refund of the amount. She states that once the money is received from the petitioner, the said money shall be refunded to the APO as the money is the one received by the respondent from APO and paid to the petitioner for the supply of the material.

9. Having heard the learned counsel for the parties, I do not see any illegality in the impugned award. This I say so, because concedingly the quality of the goods supplied by the petitioner to the APO through the respondent were of inferior quality. The petitioner without any demur had lifted the material supplied to the APO and it is conceded during the submission that the material so lifted by the petitioner has been sold to the cattle feeder at a throw away price. This also denote that the material being of not required quality, the same has been sold to the cattle feeder at throw away price.

10. Surely once the material has been lifted by the petitioner, there was no occasion for the Arbitrator also to get the quality of the material tested. So, it follows that once the material has been lifted back, it was required for the petitioner as well as the respondent to refund the money back to the APO, otherwise, it shall be a case of unnecessary enrichment. It is because, the petitioner had resisted the refund of the amount, the respondent had invoked the arbitration clause in the agreement with the petitioner, resulting in the impugned award.

11. I agree with the submission made by Ms. Anju Bhattacharya by drawing my attention to pages 205 onwards to contend that the APO has been insisting the respondent for refund of money. This also negate the plea

of Mr. Jayant Mehta that there is no claim made by the APO against the respondent. I also take on record the submission made by Ms. Anju Bhattacharya that once the money is received from the petitioner, the respondent shall refund the same to the APO. The aforesaid conclusion of mine clearly suggests that the impugned award does not warrant any interference, more particularly in exercise of power under Section 34 of the Arbitration and Conciliation Act. The petition is dismissed.

I.A. 14857/2019 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 23, 2019/*jg/aky*