

\$~28 (original)

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

+ ARB.P. 139/2021 & I.A.1102/2021

M/S NATIONAL COLLATERAL MANAGEMENT
SERVICES LIMITED THROUGH ITS HEAD
GOVERNMENT Petitioner

Through: Mr. Vishal Bhatnagar, Adv.

versus

JAGDAMBA RICEMILL & ANR. Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (O R A L)

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09.07.2021

(Video-Conferencing)

I.A.1102/2021 (condonation of delay)

1. For the reasons stated in the application, the delay is condoned.
2. The application is disposed of accordingly.

ARB.P. 139/2021

1. Despite issuance of notice, there is no appearance on behalf of the respondent and there is no reply to this petition. As such, the court has heard Mr. Vishal Bhatnagar, learned counsel for the petitioner and proceeds to decide this petition.

3. The disputes between the parties emanate from a Milling Agreement dated 30th December, 2015, whereby the respondent

appointed the petitioner for procuring an order for milling of paddy and conversion thereof into raw rice/parboiled rice and for lifting of paddy from purchase centres specified by the Food Corporation of India, for milling at the rice mill of the respondents.

4. The petition avers that milling paddy work commenced, and was being continued till 2018. The petitioner asserts that it had provided 79,583.6 quintals of paddy to the respondents for conversion into raw rice, but that the respondents defaulted in conversion to the extent of 12,898 quintals, and also failed to return the paddy supplied by the petitioner. This, the petition asserts, has resulted in liability of the respondents to return the paddy which was provided by the petitioner and pay damages, apart from interest and penalty for delayed rice delivery. This and other associated disputes which are set out in paras 4 to 17 of the present petition, have necessitated appointment of an arbitrator to arbitrate thereon.

5. The arbitration clause (Clause 20.0) in the Milling Agreement reads thus :

“Any and all claims and disputes arising out of or in connection with this Agreement or its performance shall be settled by arbitration by a single arbitrator to be appointed by the Managing Director and Chief Executive Officer of NCML or any other official designated by him. The arbitration proceedings shall be held in Delhi in accordance with the provisions of the Arbitration and Conciliation Act, 1996.”

6. It is obvious that, in view of Section 12 (5) of the 1996 Act read with the judgments of the Supreme Court in *Perkins Eastman*

*Architects DPC v. HSCC (India) Ltd.*¹, *Bharat Broadband Network Ltd. v. United Telecoms Ltd.*² and *Haryana Space Application Centre v. Pan India Consultants (P) Ltd.*³, the aforesaid Clause cannot be enforced, as it confers exclusive right on one of the parties to the agreement to appoint the arbitrator. It is in these circumstances that, after issuance of a notice to the respondents, on 30th December, 2019, for appointing an arbitrator, and on the failure of the respondents to respond thereto, the petitioner has moved this Court under Section 11(5) and (6) of the 1996 Act.

7. Clearly, there is an arbitrable dispute between the parties and this Court has the jurisdiction to appoint an arbitrator.

8. The demand of the petitioner has been quantified, in para 25 of the petition, as ₹ 3,82,51,604/-. Mr. Bhatnagar submits that the dispute could be referred to the Delhi International Arbitration Centre (DIAC) to appoint an arbitrator.

9. Accordingly, the aforesaid dispute is referred to the DIAC, to appoint a suitable arbitrator to arbitrate thereon. The parties may contact the DIAC accordingly, consequent on receipt of a copy of the order passed today which would be e-mailed to learned Counsel for the parties by the Registry.

¹ 2019 SCC OnLine SC 1517

² (2019) 5 SCC 755

³ (2021) 3 SCC 103

10. The arbitration would proceed in accordance with the rules and regulations of the DIAC and the arbitrator would also be entitled to fees as per the schedule of fees maintained by the DIAC.

11. With the aforesaid directions, this petition stands disposed of.

C. HARI SHANKAR, J

JULY 9, 2021/kr



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