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

% ***Date of decision: 23.02.2022***

+ **ARB.P. 80/2022**

NORTH END FOODS MARKETING PRIVATE LIMITED

..... Petitioner

Through: Mr. Rahat Bansal, Advocate

Versus

M/S JAI HANUMAN RICE AND GENERAL MILLS & ANR.

..... Respondents

Through: Mr. Sanjay Bansal, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (oral)

1. The present petition has been filed by the petitioner under Section 11 (5) of the Arbitration and Conciliation Act, 1996 seeking appointment of Arbitrator for adjudication of disputes with respondents. Petitioner is a Private Limited Company, engaged in the business of providing service like procurement, logistics, warehousing, arrangements, inspection, valuation, quality testing, gradation, monitoring services and other services related to trade finance business.

2. According to petitioner, Petitioner-Company and the respondent No. 1 (of which late Shri. Surinder Kumar Gupta, deceased father of respondent ARB.P. 80/2022

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No.2 herein was partner) entered into a Trade Facilitation Agreement dated 17.4.2019. A Statement of Work dated 17.4.2019 was also executed between the parties, according to which petitioner- Company was to procure 12000 MT of paddy for respondent No. 1, who was liable to pay consideration for the said paddy in terms of Clause (i) thereof to the petitioner.

3. Petitioner claims that it procured approximately 8211 MT of paddy for respondent No. I and the same was stored in godowns/plinths owned by respondent No.1 and the payment in respect of the said paddy procured by petitioner was due towards respondent No.1. However, respondent No.2 illegally and clandestinely removed said paddy from the said warehouse, which fact came to the knowledge of petitioner only on 18.09.2019 and 19.09.2019. Petitioner resisted against the act of respondents and after a series of talks and meeting, entered into a Settlement Agreement dated 19.09.2019 whereunder respondent No.1 agreed to pay the outstanding amount mentioned in said settlement to petitioner by 3.10. 2019. However, the said payment was not made.

4. Learned counsel has submitted that Shri Surender Gupta, one of the partners of the respondent No.1 expired on 03.08.2020 leaving behind respondents No.2 to 5 and on his behalf, respondent No.2 – Mr.Gaurav



Gupta is managing day to day affairs of the company. It is submitted that respondent No.2 has been negotiating with petitioner and gaining time to make outstanding payment and offered to pay a sum of Rs.9,13,55,825/- to the petitioner-Company within 80 days and to this effect, a Deed of Undertaking dated 07.08.2020 was also furnished. Further, to show the *bona fide*, a post dated cheque bearing No.012583 dated 30.10.2020, for Rs.9,13,55,825/- drawn on Canara Bank, Karnal Branch, Haryana was also handed over by respondent No.2 to the petitioner in case payment is not made within 80 days. Even respondent No.2 issued another postdated cheque bearing No.944420 dated 30.10.20 for Rs.9,13,55,825/- drawn on Canara Bank, Kamal in his capacity as partner/ authorized signatory of respondent No.1, if the payment is not done. However, respondents failed to adhere to the Deed of Undertaking dated 07.08.2020 and did not repay the amount within 80 days, therefore, the afore-noted cheque was presented in the bank, which was returned dishonoured with the remarks "Exceeds Arrangement". Even the cheque given by respondent No.2 also got dishonored on presentation with the remark "Funds Insufficient". Therefore, in terms of Clause 55 and 56 of Trade Facilitation Agreement dated 17.04.2019, petitioner invoked arbitration through notice dated 12.11.2021



and appointed sole arbitrator for adjudication of disputes with respondent. However, since there is no consent or communication from the respondent, therefore, the present petition has been filed.

5. Learned counsel on behalf of respondent submits that the claims raised in the present petition are disputed, however, fairly conceded that the disputes *inter se* parties are arbitrable. Learned counsel also submitted that respondent has no objection if disputes are referred to an independent arbitrator appointed by this Court.

6. Accordingly, **Mr. Justice (Retd.) Pradeep Nandrajog (Mobile: 9818000130)** is appointed the sole Arbitrator to adjudicate the dispute between the parties.

7. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

8. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

9. The present petition and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 23, 2022/r

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