

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

% **Date of order : 9th December, 2022**

+ **O.M.P.(I) (COMM.) 361/2022 & I. A. No. 20843/2022**

**NATIONAL AGRICULTURAL COOPERATIVE MARKETING
FEDERATION OF INDIA NAFED** Petitioner

Through: **Mr. Aaditya Vijay Kumar and Mr.
Akshit Mohan, Advocate**

Versus

MS CHAMAN COLD STORAGE AND ICE FACTORY & ORS.
..... Respondents

Through: *Nemo*

**CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter "Arbitration Act") has been filed on behalf of the petitioner seeking *inter alia* the following reliefs:-

“(a) Pass an ex-parte ad-interim order directing the Respondents, its agents and affiliates to deposit a sum of Rs. 1,60,25,013 being the rent and penalty chargeable under the Agreement but excluding interest and other charges, before this Hon’ble Court, securing the financial interest of the Petitioner with respect to the disbursal of the rent duly

payable by the Respondents to the Petitioner;

*(b) In the alternative, pass an ex parte ad interim order restraining the Respondents, their respective directors, servants, officers and or agents from disposing of assets stated in **Schedule I** of this petition in any manner directly and/or indirectly, voluntarily and/or involuntarily, transferring, conveying, alienating dealing with, creating third party rights and or otherwise encumbering or further encumbering the same until the completion of arbitration proceedings;*

(c) Direct the Respondents to provide a list of both movable and immovable properties owned by the Respondents before this Hon'ble Court and as a consequence of such a disclosure, pass an interim order restraining the Respondents, their respective directors, servants, officers and or agents from disposing off the movable and immovable assets so disclosed in any manner directly and/or indirectly, voluntarily and/or involuntarily, transferring, conveying, alienating dealing with, creating third party rights and or otherwise encumbering the same until the completion of arbitration proceedings; and

(d) Pass an ex-parte ad-interim order directing the Respondents, its agents and affiliates to handover the vacant and peaceful possession of the Property to the Petitioner and deposit the keys of the Property before this Hon'ble Court;”

2. The petitioner is a society registered under the Multi State Cooperative Societies Act, 2002 set up with the object to promote co-operative marketing of agricultural produce to benefit the farmers. The respondent no. 1 is a partnership concern running cold storage and ice factory, where respondent no. 2 and 3 are partners.

3. The petitioner issued tender dated 19th July 2017 inviting bids for

operating, maintaining and managing the property comprising of a Multi Commodity Pack House/ Cold Storage at Tansarmal, Umernala and Maherakhapa, Sausar, alongwith 11 pre-engineering building collection centres in Chindwara District, Madhya Pradesh. The respondents were the highest bidders furnishing their financial and technical bids to the tune of Rs. 1,54,250/- per month, adding up to a total of Rs. 18,51,000/- per annum alongwith the GST applicable.

4. The petitioner issued a Letter of Interest on 1st September 2017 on the terms of Request for Proposal (hereinafter “RFP”) which was accepted by the respondents vide communication dated 6th September 2017 with the RFP being counter signed and, accordingly, a Lease Agreement was entered into on 14th September 2017.

5. The parties also agreed to refer to arbitration in the event of any dispute between them. On 28th November 2017, the parties entered into an Addendum to the Lease Agreement for handing over 7 Motor Vehicles and 2 Refrigerated Vans to the respondent without any extra fee, with the precondition that the respondents would be liable to deposit road tax with the concerned transport authority.

6. The petitioner handed over the possession of the property to the respondents on 6th October 2017. Thereafter, disputes arose between the parties pertaining to the issue of licence fee and other fees, which the respondents failed to pay. Ultimately, the petitioner issued notice of termination of the Lease Agreement on 19th August 2018, and thereby, sought peaceful possession of the property and the movable properties in question.

7. Thereafter, the petitioner sought to invoke arbitration proceedings in terms of the Lease Agreement for resolution of disputes between the parties vide notice dated 1st October 2020, to which the respondent replied on 6th January 2021 denying the allegation but admitting the existence of disputes between the parties.

8. The parties, however, could not appoint an arbitrator by mutual agreement therefore, the petitioner filed a petition under Section 11(5) and 11(6) of the Arbitration Act. Consequently, vide order dated 4th March 2021, a Coordinate Bench of this Court appointed Mr. Hari Prakash Sharma, Retired ADJ, as the Sole Arbitrator.

9. Against the said order, the respondents sought to file a Special Leave Petition and vide order dated 24th September 2021, the Hon'ble Supreme Court stayed the proceedings before the Arbitrator.

10. The petitioner is now before this Court seeking the aforesaid reliefs.

11. Learned counsel appearing on behalf of the petitioner submitted that that the respondent in violation of terms agreed between the parties, vide communication dated 6th November 2017, 8th December 2017, 29th May 2018 and 19th July 2018 reneged from the terms of Lease Agreement and claimed exemption from license fee, electricity and road tax expenses. The petitioner made communications on several occasions, including on 4th December 2017, 11th December 2017, 22nd January 2018, 26th April 2018, 17th May 2018, 23rd May 2018, 15th June 2018 and 3rd July 2018 calling upon respondents to pay the aforesaid licence fee in a timely manner, however, the respondents did not comply with the same.

It is submitted that there remains a sum of Rs. 78,34,338.10/- alongwith interest and damages outstanding with the respondents. Moreover, the respondents repeatedly defaulted in its obligations under the Lease Agreement after being handed over the property, which they kept holding onto.

12. It is further submitted that in the proceedings before Hon'ble Supreme Court, the respondents have filed multiple requests for adjournment in order to seek the protection granted to them. It is submitted that since the Lease Agreement stands terminated, the only remedy that, if at all, remains is claim for damages and the respondents cannot keep on holding the property.

13. It is, therefore, prayed that the instant petition may be allowed and the respondents may be directed to deposit the outstanding sum alongwith other directions.

14. Heard learned counsel for the petitioner and perused the record.

15. The petitioner, upon being aggrieved by the alleged default on the part of the respondents had terminated the Lease Agreement, and thereafter, invoking the arbitration clause, had attempted to resolve the disputes amicably. Upon failing to appoint an arbitrator by mutual consent, the petitioner resorted to filing a petition under Section 11(5) and 11(6) of the Arbitration Act, which stood disposed of by the Coordinate Bench of this Court vide order dated 4th March 2021, whereby, a Sole Arbitrator was also appointed.

16. However, aggrieved by the order, the respondents approached the Hon'ble Supreme Court. Vide order dated 24th September 2021, the

Hon'ble Supreme Court stayed the arbitration proceedings before the learned Sole Arbitrator.

17. The stay of the arbitration proceedings before the learned Sole Arbitrator to the respondents is an interim relief that was granted and the proceedings before the Hon'ble Supreme Court in the Special Leave Petition still remain pending.

18. Since the arbitration proceeding have already been initiated by the order of the Coordinate Bench of this Court and thereafter, have been stayed by the Hon'ble Supreme Court, this Court does not find any cogent reason to intervene in the dispute between the parties, which are already under consideration before the learned Sole Arbitrator as well as the concerned Courts.

19. Accordingly, the instant petition is dismissed for being devoid of any merit.

20. Pending applications, if any, also stand dismissed.

21. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 9, 2022
SV/MS

[Click here to check corrigendum, if any](#)