



\$~3

\*

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

+

ARB.P. 731/2023 and I.A. 13486/2023

COFCO INTERNATIONAL INDIA PVT LTD ..... Petitioner

Through: Mr. Ramesh C. Kainthola and Mr.  
Vikas Kumar, Advocates.

versus

SWASTIK AGRO IMPEX INDIA PVT LTD ..... Respondent

Through: Mr. Awanish Kumar and Mr. Sanket  
Ambali, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

**14.05.2024**

%

By way of the present petition under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from two Purchase Contracts bearing Nos. PUR/2122/0010553 and PUR/2122/0010554 ('Purchase Contracts'), both dated 09.02.2022

2. Notice on this petition was issued on 31.08.2023; consequent upon which reply dated 24.01.2024 and rejoinder dated 12.03.2024 have been filed by the parties.
3. Mr. Awanish Kumar, learned counsel appearing for the respondent argues, that the Purchase Contracts from which the petitioner claims that disputes have arisen, never came into force or effect. In this behalf, Mr. Kumar draws attention to the payment terms contained in the Purchase Contracts, to submit that these contemplated that 90% of



the payment for the purchase of Indian Wheat was to be made by the petitioner to the respondent within 05 days; and the balance was to be paid upon receipt of the original documents.

4. Mr. Kumar submits however, that the said 90% price never came to be paid; and by reason of that, the contract never came into force.
5. Counsel further argues, that as would be seen from a copy of the Purchase Contracts appended to the petition, the Purchase Contracts were never signed *on behalf of the petitioner*; and therefore, yet again, the contract never came into force. It is noticed however, that the Purchase Contracts have been signed at the foot *on behalf of the respondent*.
6. Furthermore, counsel argues, that clause 7 of the terms and conditions of the Purchase Contracts also contemplate that the agreement would be executed in two or more counter-parts; and that a signed copy of the contracts would be sent to the seller (i.e. the respondent) by the buyer (i.e. the petitioner) through e-mail/scan/fax. Counsel for the respondent submits that that also never happened.
7. Mr. Kumar further argues, that clause 3 of the terms and conditions of the Purchase Contracts provided that if the respondent failed to supply the cargo in time, the petitioner would have the right to recover losses, including losses incurred as a result of the difference between the contract price and the market price of the commodity prevailing on the date of default. Counsel submits however, that the petitioner has been unable to place on record any evidence to show that there was any difference in the market price and the contract price on which they purchased the wheat.



8. After duly considering the objections raised on behalf of the respondent, it is evident that all these objections relate to the merits of the disputes between the parties; and a reading of reply dated 23.01.2024 filed in the matter shows that the respondent has neither disputed the existence of the arbitration clause; nor of the disputes between the parties; nor that the ‘seat’ and ‘venue’ for arbitration has been agreed to be at New Delhi.
9. The record also shows, that the petitioner had invoked arbitration *vide* notice dated 14.10.2022, which notice was sent to the respondent *via* e-mail.
10. Upon a conspectus of the averments contained in the petition, the objections taken by the respondent, and the submissions made at the Bar, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 14.10.2022, do not appear *ex-facie* to be non-arbitrable.
11. After this court expressed the above opinion, learned counsel for the respondent submits that, if the disputes are being referred to arbitration, that may be done under the aegis of the Delhi International Arbitration Centre (‘DIAC’).
12. Accordingly, the present petition is allowed and **Dr. Amit George, Advocate (Cellphone No.: +91 9910524364)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the



parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.

13. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
14. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
15. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
16. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
17. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
18. The petition stands disposed-of in the above terms.
19. Pending applications, if any, also stand disposed-of.

**ANUP JAIRAM BHAMBHANI, J**

**MAY 14, 2024/V.Rawat**