



2024:DHC:9133



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

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Date of Decision: 26.11.2024+ **ARB.P. 1230/2024****SAHYADRI FARMS POST HARVEST CARE LIMITED**

.....Petitioner

Through: Mr. Ashish Khorana, Adv.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Shashank Dixit, CGSC and
Mr. Kalyan Babu Singh, GP.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition filed under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'A&C Act') seeks appointment of a sole arbitrator to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in the context of a Request for Proposal (RFA) bearing No. 62609/Q/1/RFP/2022-23/RAISIN BROWN/APO (Pur-11) dated 05-05-2022, inviting online bids for supply of 480 MT Raisin Brown to be delivered to the respondent in specified quantities as contained in the Balance of Quantities (BOQ) to the RFP and Appendix-N.
3. On 06.06.2022, the respondent awarded four contracts to the petitioner for supply of the aforesaid quantity as under: -



2024:DHC:9133



- i. A/T No. 62609/1/22-23/ Raisin Br/APO dated 06.06.2022 for supply of 130MT RAISIN BROWN
 - ii. A/T No. 62609/2/22-23/ Raisin Br/ APO dated 07.06.2022 for supply of 140MT RAISIN BROWN
 - iii. A/T No. 62609/3/22-23/ Raisin Br/ APO dated 07.06.2022 for supply of 140MT RAISIN BROWN
 - iv. A/T No. 62609/4/22-23/ Raisin Br/APO dated 07.06.2022 for supply of 70MT RAISIN BROWN
4. Admittedly, the following arbitration clause is applicable to the contract between the parties: -

*“14. **Arbitration.** All disputes of differences arising out of or in connection with the Contract shall be settled in consonance with the provisions of Arbitration & Conciliation Act 1996 read in conjunction with Amendment Act 2015 and any other statutory law, as promulgated from time to time. in a manner outlined at Part-III and other terms and conditions of this RFP Jurisdiction of Arbitration will be at Delhi (Contract Conclusion place). All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration The standard clause of arbitration is as per Forms DPM-7, DPM-8 and DPM-9 (Available on MoD website and can be provided on request).”*

5. As per the terms of the contract, the petitioner furnished bank guarantee in the prescribed form. The contract provided for a fixed delivery schedules for supply of the Raisin Brown.



6. The petitioner *vide* letter dated 28.07.2022 was granted extension for delivery till 29.08.2022 with liquidated damages @0.5% per week. The petitioner was able to fulfil delivery of only partial contracted quantity of 65.088 MT of Brown Raisin.

7. Disputes between the parties have arisen *inter alia* on account of termination of the contracts by the respondent *vide* letters dated 21.03.2023 and 27.04.2023 on account of alleged delay in delivery of the balance contracted quantity of Raisin Brown and the forfeiture of the bank guarantees furnished by the petitioner.

8. It is the case of the petitioner that the delivery of balance quantity was impossible due to early arrival of Monsoon which delayed the natural drying of the fresh raisins and severally damaged the crop. It is stated that delay in the delivery was attributable to the aforesaid reason and despite the petitioner invoking the force majeure clause, the respondent illegally terminated the contracts.

9. In view of the disputes between the parties, a notice dated 27.04.2024 was issued by the petitioner for invocation of arbitration. However, the respondent failed to respond to the same.

10. In the above circumstances, the petitioner has approached this Court, through the present petition, seeking the appointment of a sole arbitrator to adjudicate the dispute.

11. Since the existence of the arbitration clause is evident from a perusal of the contract, there is no impediment to constituting an arbitral tribunal for adjudicating the disputes between the parties, as mandated in terms of the judgments of the Supreme Court in ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532 and ***Interplay between Arbitration***



2024:DHC:9133



Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re, 2023 SCC OnLine SC 1666.

12. Further, in terms of the judgments of the Supreme Court in ***Central Organisation for Railway Electrification v. ECI-SPIC-SMOMCML (JV)*** 2024 SCC OnLine SC 3219, ***Perkins Eastman Architects DPC v. HSCC (India) Ltd*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd***, (2017) 8 SCC 377 and ***Bharat Broadband Network Limited v. United Telecoms Limited***, 2019 SCC OnLine SC 547, it is incumbent on this Court to appoint an independent sole arbitrator to adjudicate the disputes between the parties.

13. Learned counsel for the respondent accedes to the appointment of an independent sole arbitrator by this Court to adjudicate the disputes between the parties.

14. Accordingly, Mr. Rajiv Dwivedi, Advocate (Mob. No.: +91 9313061263) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

15. The respondents shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

16. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

17. The arbitration shall take place under the aegis of and as per the rules of the Delhi International Arbitration Centre (DIAC).

18. All rights and contentions of the parties in relation to the claims/counter claims are kept open, to be decided by the learned Sole



2024:DHC:9133



Arbitrator on their merits, in accordance with law.

19. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

20. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 26, 2024/sl