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

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Date of Decision: 04.01.2024

+ **FAO(OS) (COMM) 1/2024**

**M S M P STATE CO OP OILSEED GROWERS FEDERATION
LTD THROUGH OFFICIAL LIQUIDATOR** Appellant

Through: Mr Gopal Jha, Adv.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM Appl.450/2024

1. Allowed, subject to just exceptions.

FAO(OS) (COMM) 1/2024 & CM Appls.451-52/2024

2. This appeal seeks to challenge the order dated 12.05.2022 read with the order dated 24.05.2022 as well as the order dated 03.11.2023 passed in OMP (Comm.) 119/2020 and I.A.12898/2023 preferred in OMP (Comm.) 119/2020.

3. The principal ground on which the substantive order dated 12.05.2022 and the subsequent order dated 03.11.2023 is sought to be challenged is that the appellant's counsel had wrongly given his consent in the matter.

3.1 A perusal of the substantive order dated 12.05.2022 would show that it proceeded on the consent given by the counsel for the appellant, which was backed by a concession made by the counsel for the respondents, as indicated hereafter.

4. The record shows that the Arbitral Tribunal *qua* the subject contract



awarded the respondent no.1/UOI Rs.4,35,30,095/- along with interest pegged at the rate of 21% per annum.

4.1 The record also discloses that the award dated 28.01.2000 was predicated on the disputes that had erupted between the parties concerning the supply of refined mustard oil.

4.2 It is not in dispute that the appellant had furnished a bid for supplying 3000MT of mustard oil at the rate of ₹38,750/- per MT.

4.3 It is also not in dispute that the appellant's bid was accepted by the respondents.

4.4 Since the appellant did not comply with one of the conditions for progressing the contract, i.e., furnishing a bank guarantee and making a security deposit, the contract was terminated by the respondents *via* letter dated 10.06.1998.

4.5 The respondents, thus, proceeded to float a fresh tender. This tender was opened on 14.07.1998. The lowest bid that the respondent received against the fresh tender for supplying refined mustard oil was Rs.52,000/- per MT.

5. It is against his backdrop that the respondents invoked the arbitration process, which as noticed, culminated in the award dated 28.01.2000.

6. As indicated above, respondent no.1/UOI was awarded Rs.4,35,30,095/- along with interest at the rate of 21% per annum, although respondent no.1 had claimed interest at the rate of 24% per annum.

7. The award was challenged by the appellant by way of a petition preferred under Section 34 of the Arbitration and Conciliation Act, 1996 [in short, "1996 Act"]. Broadly, the award was challenged by the appellant on four grounds, which are captured by the learned Single Judge in paragraph 11 of the order dated 12.05.2022. These grounds were:

- (i) Reference made to the Arbitral Tribunal was barred by limitation.
- (ii) The award was bereft of reasons.



(iii) Although respondent no.1 *via* communication dated 22.02.1999 had claimed a lower amount i.e., Rs.3,97,50,000/-, however the claim was lodged with the Arbitral Tribunal was inflated to Rs.4,35,30,095/-.

(iv) The award of interest at the rate of 21% was excessive.

8. A perusal of the order dated 12.05.2022 also discloses that insofar as the challenges made to the award on grounds (i) and (ii) set forth hereinabove were given up by the appellant's counsel.

9. The appellant's counsel confined the challenge to the award to the remaining two aspects, i.e., the error in calculating the awarded amount and *vis.-a-vis.* the rate at which interest had been awarded.

9.1 These aspects are recorded by the learned Single Judge in paragraph 12 of the order dated 12.05.2022.

10. Given the position taken by the counsel for the appellant, counsel for the respondents fairly conceded that the awarded amount would have to be restricted to Rs.3,97,50,000/- as indicated in the respondent no.1's letter dated 22.02.1999. As far as the rate at which interest had been awarded by the Arbitral Tribunal, counsel for the respondents conveyed to the court that he had obtained instructions from the respondents that the rate could be scaled down as deemed fit by the court.

11. Having regard to the stand taken by the counsel for the parties, the learned single judge records that the suggested rate which was accepted by the parties would stand reduced to 12% from 21%, which was awarded by the Arbitral Tribunal. The learned Single Judge also held that the interest rate, which was scaled down to 12% would run from the date of demand, i.e., 22.02.1999 till the date of payment.

12. Concededly, the respondents' counsel accepted the modification proposed by the court in the backdrop of the stand taken by the counsel for the appellant.

13. Consequently, the learned Single Judge modified the impugned award by restricting the principal amount to Rs.3,97,50,000/- and scaling down the rate of



interest to 12% which, as indicated above, would run from 22.02.1999 till the date of payment.

14. It appears that there was an inadvertent typographical error, which had crept in paragraph 15 of the order dated 12.05.2022, , was corrected on an oral application made on behalf of the respondents, *via* order dated 24.05.2022.

15. The appellant, thereafter, sat tight and did not move the court up until I.A.12898/2023 was preferred in the disposed of action taken under Section 34 of the Arbitration and Conciliation Act, 1996 [in short, “the Act”].

15.1 This application was listed before the court on 15.11.2023. The learned Single Judge having regard to the fact that the modification of the award was based on the mutual concessions made by the counsel for the parties, dismissed the application, which according to him, was in effect an attempt to review of the substantive order dated 12.05.2022.

16. Mr Gopal Jha, who appears on behalf of the appellant, submits that he had filed an application for recall of the order dated 12.05.2022, and not for review.

17. In our opinion, whichever way we look at the frame of the application, the net effect was that the appellant sought to renege from the concession given by the counsel for the appellant, based on which the respondents altered their position to their detriment.

18. As indicated above, the appellant did not move a finger with regard to its supposed grievance concerning the substantive order dated 12.05.2022 till nearly one year has passed.

19. In our opinion, the argument advanced by Mr Jha that no instructions had been given to its counsel to confine the challenge to the award to two grounds, as indicated in the order dated 12.05.2022, is completely



misconceived. Counsel has ostensible authority especially on matters concerning law, to take a call as to the ground(s) which he thinks are most viable for progressing the case of his client. The very fact that the appellant approached the court nearly after one year shows that it had no grievance *qua* the outcome. Notably, the appellant got a huge concession from the respondents whereby not only the principal amount was scaled down, but also the interest awarded by the Arbitral Tribunal was brought down from 21% to 12%.

20. Furthermore, we are unable to understand as to why in a circumstance like this, the appellant would seek to assail the orders passed by the learned Single Judge when it is already in liquidation and would be hard pressed for resources to meet the claims of various creditors. This, to our minds, is an exercise in futility, which would result, possibly, in precious funds going out of a common kitty. Fee payable to lawyers and the litigation cost would only add to the woes of the appellant.

21. We would have imposed cost for filing this appeal. We have refrained from going down this path, as the appellant is in liquidation.

22. We find no merit in the appeal. The appeal is, accordingly, dismissed.

23. Consequently, interim applications are rendered inefficacious. The applications are, accordingly, closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JANUARY 4, 2024/pmc