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

\+ O.M.P. (COMM) 75/2017

FOOD CORPORATION OF INDIA .....Petitioner

Through: Mr. Paritosh Budhiraja, Ms. Larika Khandelwal, Advs.

versus

JAI DURGA RICE MILLS AND PARTNERS .....Respondent

Through: Mr. Varun Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **28.04.2025**

1. This is a petition seeking modification of the award dated 27.02.2013 and award interest at the rate of 18% per annum from 01.03.1995 till 21.03.2010.

2. Additionally, the petitioner also seeks modification of the award with direction that costs of litigation to be borne by the respondent.

3. The brief facts are that the petitioner and the respondent entered into an agreement dated 24.01.1995 for storage cum milling of paddy procured in Punjab by the claimant for kharif season 1994-95.

4. The respondent/miller failed to perform and could not mill paddy within the stipulated time period as agreed to in the agreement.

5. The petitioner invoked arbitration clause and demanded Rs. 74,88,726.31/- from the respondent vide various notices.

6. Subsequently, the petitioner invoked arbitration clause vide a final notice dated 08.12.1997 and filed an arbitration petition which was dismissed.

7. On 17.07.2013, the Hon'ble Supreme Court allowed the petition and

directed the Indian Council of Arbitration (ICA) to appoint an Arbitrator.

8. The ICA accordingly, appointed an Arbitrator and the Arbitrator so appointed passed an award dated 27.02.2013 allowing the claims of the petitioner to the tune of Rs. 74,88,726/- as claim compensation towards the loss sustained by the claimant due to the breach of the agreement dated 24.01.1995.

9. Additionally, the Arbitral Tribunal also awarded interest at the rate of 18% per annum from 22.03.2010 till realisation of the full amount of the respondent.

10. The Arbitral Tribunal also awarded costs of the petition to the extent of the Arbitrator's fees and the cost of the stamp paper paid to the ICA to be shared equally between the claimant and the respondent.

11. Mr. Budhiraja, learned counsel for the petitioner presses on a limited ground that the interest should have been awarded from 01.03.1995 and not from 22.03.2010.

12. He states that the learned Arbitrator ought to have appreciated that a period of 12 years was lost before the arbitration to start for no fault of the petitioner and it was only on account of intervention of the Hon'ble Supreme Court that the arbitration proceedings could start.

13. He further states that non-grant of the interest and entire cost of litigation is contrary to sound business principles and commercial principles.

14. Hence the petition.

15. The prayer sought by the petitioner is *akin* to modification of the arbitral award.

16. Mr. Sharma, learned counsel for the respondent relies on the judgment of the Hon'ble Supreme Court in "*The Project Director National Highways*

No. 5E And 220 National Highways Authority of India vs. M. Hakeem &Anr."SLP (Civil) No. 13020/2020 and more particularly paras 39 and 40 which read as under:

> "*39. As has been pointed out by us hereinabove, McDermott (supra) has been followed by this Court in Kinnari Mullick (supra). Also, in Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd., 2021 SCC OnLine SC 157, a recent judgment of this Court also followed McDermott (supra) stating that there is no power to modify an arbitral award under Section 34 as follows: -*
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> *(f) In law, where the Court sets aside the award passed by the majority members of the tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding.*
>
> *Under Section 34 of the Arbitration Act, the Court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2A) are made out. There is no power to modify an arbitral award.*
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> *40. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with*

the merits of an award, the 'limited remedy' under Section 34 is co-terminous with the 'limited right', namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."

17. I have heard learned counsel for the parties.

18. I am of the view that the costs as well as the interest and the date from which the same is to begin to run is exclusively within the domain of the Arbitral Tribunal and therefore cannot be interfered with by this Court. The same has been observed by the Hon'ble Supreme Court in the case of ***Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd., (2023) 1 SCC 602*** wherein it was held:-

"25. Section 31(7)(a) confers a wide discretion upon the arbitrator in regard to the grant of pre-award interest. The arbitrator has the discretion to determine the rate of reasonable interest, the sum on which the interest is to be paid, that is whether on the whole or any part of the principal amount, and the period for which payment of interest is to be made — whether it should be for the whole or any part of the period between the date on which the cause of action arose and the date of the award. When a discretion has been conferred on the arbitrator in regard to the grant of pre-award interest, it would be against the grain of statutory interpretation to presuppose that the legislative intent was to reduce the discretionary power of the arbitrator for the grant of post-award interest under clause (b). Clause (b) only contemplates a situation where the arbitration award is silent on post-award interest, in which event the award-holder is entitled to a post-award interest of eighteen per cent.

19. Additionally, reliance on the judgement of *Project Director (supra)* is also well placed. I am of the view, that granting interest from 01.03.1995 till 21.03.2010 and altering the date would be akin to modifying the award and the same cannot be done by this court. The provisions of 31 (7) (a) are clear in this regard. Total freedom has been given to the Arbitrator to grant interest at a rate and for the period it deems fit and proper.

20. Additionally, the grounds raised in the present petition do not fall within any of the parameters of Section 34 of the 1996 Act.

21. For the said reasons, there is no merit in the present petition and the same is dismissed.

22. The contention of Mr. Budhiraja, learned counsel for the petitioner that the petition filed by the respondent at courts at Firozpur are without any jurisdiction and cannot be adjudicated by this Court and are left open to be adjudicated before the competent court as and when the same is raised by the petitioner.

23. Learned counsel for the petitioner states that he shall file execution petition in accordance with law.

24. No permission for the same is required from this Court.

25. The petition is dismissed.

JASMEET SINGH, J

APRIL 28, 2025/DM

(Corrected and released 07.05.2025)

Click here to check corrigendum, if any