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

% *Date of Decision: 05.01.2022*

+ **O.M.P. (COMM) 432/2019 and IA Nos. 14333/2019, 1891/2020, 4407/2021, 4408/2021 and 4411/2021**

NATIONAL SEEDS CORPORATION LTD. Petitioner

Through: Mr Arvind Nayar, Senior Advocate
with Mr Yashvardhan, Ms Smita
Kant, Ms Kritika Nagpal, Ms
Bhavya Bhatia, Mr Akshay Joshi
and Mr Savyasachi Rawat,
Advocates.

versus

**NATIONAL AGRO SEEDS CORPORATION
(INDIA)** Respondent

Through: Ms Pooja Saigal with Mr Anshul
Bajaj, Mr Simrat Singh Pasay and
Mr Chaitanya Pandey, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

[Hearing Held Through Videoconferencing]

VIBHU BAKHRU, J (ORAL)

1. National Seeds Corporation Limited (hereafter '**NSCL**') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning an arbitral award dated 13.06.2019 (hereafter '**the impugned award**') rendered by an Arbitral Tribunal constituted by a Sole Arbitrator (hereafter '**the Arbitral Tribunal**').

2. The impugned award was rendered in the context of disputes that had arisen between the parties in connection with a Distributorship Agreement dated 24.10.2009, which was renewed by an Agreement dated 01.04.2010 and subsequently on an annual basis (hereafter '**the Agreement**').

3. The State Government of Uttar Pradesh had floated various subsidy schemes for providing seeds to farmers at subsidised rates. NSCL states that under the said schemes, seeds were required to be supplied to the farmers at a discounted rate of approximately 50% of the price and NSCL would receive the subsidy amount directly from the State Government. NSCL had accordingly entered into Agreements with various dealers including the respondent for implementation of the subsidy schemes.

4. In terms of the Agreement, the respondent had agreed to sell certified seeds of approved varieties with subsidies at the retail price fixed by NSCL after reducing the admissible amount of subsidy. In consideration for the same, NSCL had agreed to provide a trade discount to the respondent. The respondent further agreed that it would sell 25% of the oilseed and pulses and 30% of the wheat certified seeds to farmers from the SC/ST category. The respondent agreed to maintain a separate register for the beneficiary farmers and had agreed that it would sell seeds in the notified districts as per the guidelines issued by the Appropriate Authority.

5. In terms of Clause 11 of the Agreement, the respondent was

obliged to collect all records, cash, memos, registers and subsidized sale details in the approved format and submit the same to the regional office of NSCL after verification from the Appropriate Authority of the Agriculture Department.

6. The respondent claims that it had complied with its obligations under the Agreement and had sold the seeds obtained from NSCL at discounted prices. Accordingly, it claimed that it was entitled to the trade discount. It quantified the outstanding commission/trade discount against the seeds distributed as on the date of the filing of the Statement of Claims at ₹1,46,40,005.02/-. It also claimed interest on the said amount.

7. NSCL disputed the claims on, essentially, two fronts. First, it claimed that the trade discount related to seeds distributed during several years commencing from the financial year 2011-12 and the amounts due for the period prior to 31.03.2015 (three years prior to filing of the Statement of Claims) were barred by limitation. Second, it claimed that the respondent's claim was not in terms of the Agreement. According to NSCL, the respondent would be entitled for disbursement of trade discount only on receipt of the subsidy from the State Government. NSCL claimed that since the State Government had not released the subsidy, the respondent was not entitled to the outstanding trade discount.

8. NSCL also raised a counter-claim for an amount of ₹7,68,96,959/-. NSCL claimed that it had suffered losses in respect of

the seeds supplied by the respondent under the subsidy scheme of the State Government of Uttar Pradesh. It stated that in terms of Clause 8 of the Agreement, the respondent was bound to make good the loss suffered by NSCL.

Submissions

9. Mr Nayar, learned senior counsel appearing for NSCL assailed the impugned award on four grounds. First, he submits that the decision of the Arbitral Tribunal to reject NSCL's contention that the claims were barred by limitation, is *ex facie* erroneous. He submitted that admittedly the respondent's claim included claims for arrears of trade discount in respect of seeds that were sold three years prior to the filing of the Statement of Claims. He submitted that it was *ex facie* clear that part of the claim was barred by limitation and, thus, was liable to be rejected. He contended that the Arbitral Tribunal had erroneously held that the amounts due to the respondent had been acknowledged by NSCL. He contended that NSCL had merely stated that it would pay the trade discount on receipt of subsidy and the said statement could not be construed as an unequivocal acknowledgement of liability.

10. Second, he submitted that the Arbitral Tribunal had misinterpreted Clause 8 of the Agreement to infer that NSCL was liable to pay the trade discount despite non-receipt of subsidies from the State Government of Uttar Pradesh.

11. Third, he submitted that the interest awarded by the Arbitral Tribunal was excessive and harsh and thus, patently illegal. NSCL also

relies on the decision of *Jaiprakash Associates Ltd. Through Its Director v. Tehri Hydero Development Corporation India Ltd. Through Its Director: 2019 SCC OnLine SC 143* in support of his contention.

12. Lastly, he contended that the Arbitral Tribunal had erred in rejecting the counter-claim on the ground that NSCL had not established the same. He submitted that NSCL had not received subsidies from the State Government and it must be presumed that the same was on account of deficiency in the documents submitted by the respondent. He referred to Clause 11 of the Agreement and submitted that the respondent was liable to furnish the documents and therefore, the onus to establish that it had done so was entirely on the respondent. He contended that the Arbitral Tribunal had proceeded on an erroneous premise that the burden of proof in support of the counter-claim rested on NSCL.

Reasons and Conclusion

13. The first and foremost question to be examined is whether the impugned award is vitiated by patent illegality on the ground that the Arbitral Tribunal has accepted time barred claims. Admittedly, the claims made by the respondent included claims for certified seeds sold to the farmers during the years 2010-11 to 2014-15. The respondent had filed its Statement of Claims on 13.03.2018 and thus, concededly, part of the claim pertains to amounts due three years prior to filing of the Statement of Claims. However, the Arbitral Tribunal found that NSCL

had acknowledged the amounts as outstanding and payable to the respondent in its letters and other communications. The Tribunal also found that the amounts due to the respondent were acknowledged by NSCL in its books of accounts. The ledger/statement of accounts for the financial year beginning from 01.04.2009 to 11.12.2017 produced before the Arbitral Tribunal duly reflected the amounts as outstanding and payable to the respondent. The sums so reflected amounted to ₹1,46,42,853.06/- which was almost similar to the amounts as claimed by the respondent. The respondent's witness (CW-1) filed an affidavit by way of evidence affirming that the statement of customer account issued by NSCL as on 31.03.2016 reflected the amounts in the ledger account.

14. In addition to the above, the Arbitral Tribunal found that NSCL had acknowledged the liability in its various letters forwarded to the respondent along with a statement of accounts. The finding of the Arbitral Tribunal that NSCL had acknowledged its liability is a finding of fact and this Court finds no ground to fault the same.

15. It is relevant to note that the contentions advanced on behalf of NSCL in this regard, in these proceedings are inconsistent. On one hand, it is NSCL's case that its liability to pay the trade discount was contingent upon receipt of subsidy and since it had not received the same, the amounts claimed were not due and payable. Thus, the respondent's claim was pre-mature. Inconsistent with the stand, it also contended that the claims made by respondent are barred by limitation. This Court finds no reason to interfere with the decision of the Arbitral

Tribunal in rejecting NSCL's contention that the respondent's claims are barred by limitation.

16. The next contention to be examined is whether the impugned award is vitiated on account of *ex facie* erroneous interpretation of Clause 8 of the Agreement. Mr Nayar, learned Senior Counsel appearing for NSCL states that Clause 8 of the Agreement clearly indicates that NSCL was liable to provide trade discounts on receipt of subsidy from the State Government of Uttar Pradesh. According to NSCL, subsidy would be released to NSCL only after the concerned authority of the State Government had verified the sale made to the beneficiary farmers. Part of the subsidy had not been released possibly because the State Agriculture Department had been unable to verify that the seeds supplied by NSCL were sold to the farmers at discounted rates.

17. Clause 8 of the Agreement reads as under:

“8. The second party fully agrees and undertakes to sell the seeds only in the notified Districts under NFSM/ISOPOM/MMA as per Guidelines of the appropriate authority. If any sales are made by the second party against the provisions of the said schemes and the subsidy is not released to the first party the losses incurred on this account will be compensated by the second party to the Corporation in addition to refund of subsidy.”

18. It is clear from the plain language of Clause 8 of the Agreement that it does not provide that disbursement of trade discount

to the respondent is contingent upon receipt of subsidy as contended by Mr. Nayar. The plain language of Clause 8 of the Agreement does not support the interpretation as canvassed by Mr. Nayar on behalf of NSCL. The Arbitral Tribunal had considered the aforesaid contention and rejected the contention that in terms of Clause 8 of the Agreement disbursement of trade discount to the respondent was contingent on receipt of subsidy. On the contrary, the Arbitral Tribunal found that in terms of Clause 8 of the Agreement, the trade discount disbursed would be recovered in the event it was found that the respondent had breached its obligations to supply the seeds in the notified districts. The decision of the Arbitral Tribunal cannot be faulted.

19. The contention that the impugned award is vitiated by patent illegality on account of erroneous interpretation of Clause 8 of the Agreement is clearly without any merit and is accordingly rejected.

20. The contention that the arbitral award is vitiated as the Arbitral Tribunal has awarded exorbitant interest is equally unmerited. The Arbitral Tribunal has awarded interest at the rate of 12% per annum. The same cannot be considered by any stretch of imagination as exorbitant. The Hon'ble Supreme Court in a recent decision in *Punjab State Civil Supplies Corporation Limited (PUNSUP) and Anr. v Ganpati Rice Mills: SLP (C) 36655 of 2016, decided on 20.10.2021*, has held that the Arbitral Tribunal has wide discretion in awarding interest under Section

31(7)(a) of the A&C Act and the impugned award cannot be interfered with except on the ground as set out in Section 34 of the A&C Act.

21. There is no provision in the Agreement which prohibits award of interest. Thus, the decision in *Jaiprakash Associates Ltd. Through Its Director v. Tehri Hydero Development Corporation India Ltd. Through Its Director* (*supra*) is clearly inapplicable. In that case, the challenge to the arbitral award was sustained as the contract between the parties prohibited grant of any interest. Clearly, award of interest contrary to the express terms of the agreement between the parties would be susceptible to challenge under Section 34 of the A&C Act. But since there is no agreement proscribing award of interest, the award of interest cannot be faulted.

22. The next aspect to be examined is whether the impugned award is vitiated on the ground that the Arbitral Tribunal has rejected the counter-claims made by NSCL. Mr. Nayar contends that the respondent had failed to perform its obligation under Clause 11 of the Agreement and therefore, NSCL was entitled to recover the loss suffered by it. He submitted that it is possible that the documents provided by the respondent were deficient which may have been the cause for the State Government of Uttar Pradesh to withhold the subsidies.

23. Clearly, no claim for damages can be entertained on mere apprehension of possibilities. This Court had pointedly asked Mr.

Nayar, whether the NSCL has made any assertion in the pleadings that a particular document submitted by the respondent was deficient or not, in accordance with the Agreement. He fairly conceded that NSCL had made no such assertion. However, he submitted that in terms of Clause 11 of the Agreement, the respondent was obliged to furnish the document directly to the State Government of Uttar Pradesh and secure the release of the subsidy.

24. Clause 11 of the Agreement reads as under:

“11. The Second party, soon after the sale is over, would collect all the records, cash memos, registers, subsidised sale details on the approved format and submit the same to the Regional office of the Corporation latest by 15th December, (Applicable year) after getting the same verified from the Appropriate Authority so that the same could be claimed from the State Govt./Govt. of India. The Second party shall also be bound to make available all the Circulars and Notifications of subsidies issued by the Appropriate Authority to the Regional office of the first party latest by 15th December of every year.”

25. A plain reading of Clause 11 of the Agreement, as set out above, does not support the contentions advanced on behalf of NSCL. Although, the respondent was required to submit the documents to NSCL after getting them verified from the concerned authorities, there is no assertion that the respondent had failed to submit any specific document to NSCL as required. NSCL's counter-claim is premised on

the basis that the respondent had failed to perform its obligation under Clause 8 of the Agreement. There is no material to support the said claim. Thus, the Arbitral Tribunal had concluded – and rightly so – that NSCL had failed to substantiate its counter-claim.

26. In view of the above, the present petition is dismissed as unmerited.

27. All pending applications are also disposed of.

JANUARY 05, 2022
RK/v

VIBHU BAKHRU, J



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