IN THE COURT OF SH. PULASTYA PRAMACHALA DISTRICT JUDGE, (COMMERCIAL COURT)-01, PATIALA HOUSE COURT, NEW DELHI

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PULASTYA PRAMACHALA

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(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

OMP (COMM) No. 133/2022

<u>In the matter of</u>: -

M/s.Ganesh Rice & General Mills,
Patto Hira Singh Road, Nihal
Singh Wala, District Moga
through its partner/ attorney Mukhtiar Singh.

…**Petitioner**

Versus

1. **District Manager,**
   Food Corporation of India, District Office,
   FCI Road, Moga, District Moga, Punjab.

… **Respondent No.1**

2. **Sh. Mihir Kumar Moitra,**
   Sole Arbitrator, H-205, Wembley Estate,
   Rosewood City, Sohna Road, Gurgaon-122001
   (Haryana)

… **Respondent No.2**

3. **Registrar, Indian Council of Arbitration,**
   Federation House,
   Tansen Marg, New Delhi-110001 (India)

...**Respondent No.3**

Date of Institution	:	25.08.2022
Arguments heard on	:	15.05.2026
Decided on	**:**	**01.06.2026**
Decision	**:**	**Petition is allowed.**

JUDGMENT

DESCRIPTION OF THE CASE

1. Petitioner has filed present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”), assailing the arbitral award dated 12.08.2012.

BRIEF FACTS OF THE CASE

2. Briefly stated, petitioner/M/s Ganesh Rice & General Mills and FCI had entered into an agreement dated 19.10.1994 and petitioner had to provide certain facility of storage place for paddy and other services i.e. milling the paddy etc. A time frame was also fixed for milling the paddy and supply rice to FCI. Petitioner did not mill all the paddy stored with it, and subsequently FCI retrieved such stock of paddy and sold them in the open market. FCI thereafter, claimed damages from petitioner, and thus, the dispute was referred to Arbitrator.

3. Initially the present petition was filed before ld. District Judge Moga, but vide order dated 22.07.2022, ld. Additional Sessions Judge ordered for return of petition for want of jurisdiction and it was ordered that petition be filed before the Court at New Delhi within 45 days from the date of order. Thus, the petition was filed before this court.

4. Petitioner has filed this petition against the award dated 12.08.2012 wherein the award of Rs.89,85,326/- was passed against it. Petitioner averred that the dispute is for the crop year 1994-95, wherein there was bumper crop of paddy in the State of Punjab, which was procured by Food Corporation of India and Punjab government agencies. Due to heavy rains, paddy was not millable and saleable. As per rice specifications fixed at that time, due to its poor quality and due to damage of the paddy with natural calamities, the paddy procurement was delayed in 1994-95. Petitioner averred that last date of milling was 28.02.1995,

which was subsequently extended up to 31.08.1995. Petitioner deposited Rs.40,000/- as security with respondent FCI. Petitioner averred that as per the policy of the year 1994-95 and alleged agreement, respondent miler was supposed to deliver advance rice in the shape of two wagons. Only thereafter equivalent paddy was to be released to the respondent miller as per clause (6) of the agreement out of the stored paddy through Release Orders, which proves that the paddy was under the custody and control of the corporation and the miller/petitioner was not supposed to even touch the paddy without Release Orders. Petitioner averred that as per Government notification, the claimant disposed of/retrieved, transferred the stored paddy, which was under their custody and control, as per the instructions of Government of India and this process started from 13.01.1995 before the stipulated last date of the said agreement.

5. Petitioner averred that an arbitration reference was made by FCI to ICA for the adjudication in the year 1998. ICA directed FCI to obtain the consent from the millers for the arbitration, as ICA could not have nominated or appointed the arbitrator. As per the clause of the agreement, only the Zonal Manager and Senior Regional Manager, Punjab were competent to nominate/appoint the arbitrator out of the penal arbitrators of ICA. FCI challenged the said order before Hon'ble Delhi High Court and Hon'ble Justice S.K. Mahajan, dismissed the plea of FCI. FCI challenged that order before Division Bench of Delhi High Court, but its petition was also dismissed. Thereafter, FCI challenged the order

before Hon'ble Supreme Court of India, which was decided in the year 2003 and ICA was directed to nominate the arbitrator, with the liberty to the respondents to raise the objections under section 16 of the Arbitration & Conciliation Act, 1996 (as amended upto date). Thereafter, present proceedings started and petitioner raised the objections under Section 16 of the Act. Respondent filed claim for 1.5 times economic cost against the petitioner on account of non-milling of the paddy, which was sold by FCI as per the public policy declared by Ministry of Food, Union of India. As per the statement of claim lodged in this case, there was no shortage on account of the paddy.

6. As per the statement, total paddy stored was 30192.10 quintals, out of which 7780.96 quintal was milled by petitioner, and 4724.50 quintal was dispatched by respondent for sale and remaining balance paddy of 17527.84 quintal was retrieved by respondent. FCI calculated the 1.5 times economic cost on the total unmilled paddy and deducted the amount, which was realized by them by the sale of the paddy. Petitioner averred that there is no clause in the alleged agreement for the sale of the paddy. There is a mandatory clause no. 13 in the agreement, saying that if the respondent miller fails to mill the paddy within the stipulated period, then it is incumbent upon the District Manager of Food Corporation of India to get the paddy milled from the other rice millers and its differential costs of that milling is recoverable out of the security deposited by the respondent and if the same is excess, then only said charges are

recoverable. So, it is admitted fact that the Food Corporation of India had not complied with this mandatory clause and disposed of the paddy against the terms of the agreement. Petitioner averred that Senior Regional Manager himself retrieved/lifted and sold the paddy as per public policy declared by the Ministry of Foods. Even the cost of gunny bags was not recoverable, as the paddy was lifted and sold in the same gunny bags and paddy sale price was fixed including the costs of gunny bags and the sale price was fixed at Rs. 396.25p that is (395+1.25p) per bag for jute bags.

7. Petitioner averred that it had milled the paddy, which was allowed by respondent as per the policy/agreement after receiving advanced rice and the remaining paddy was partially retrieved and partially disposed of by respondent under the public sale policy in respect of paddy. During the crop year of 1994-95, respondent was selling the rice old and fresh @ Rs.600/- per quintal to the exporters, prior to decision of public sale policy for 1994-95 paddy crop was taken by the Union of India in the first week of March 1995. Therefore, under these circumstances, respondent and the government had taken the decision to dispose of the paddy @ Rs.442/- per quintal against the purchase price of Rs. 360/-per quintal and thereafter @ Rs.395/- per quintal for superfine variety of paddy. The paddy sold at these rates were better than sale of rice @ Rs.600/- per quintal. So, the respondent decided to dispose of paddy as per the public policy. Petitioner averred that although the paddy was

stored in the rice mill premises of the petitioner, but same was under the direct control and custody of the concerned inspectors of the respondent and the said paddy was fully protected by the staff of the respondent and no damage was caused or occurred to paddy. The Government of India issued a Letter No.8-5/2000-DR-III dated 29.03.2000 and indicated therein that the President of India had sanctioned the payment of sum of Rs.120 crores to FCI (Respondent Corporation) as re-imbursement of the amount paid by it out of the subsidy to the State Government of Punjab and its procuring agencies towards re-imbursement of losses incurred by them in disposing of un-milled paddy procured for central pool in 1994-95 through open sale, as full and final settlement. That out of 120 crores, Rs.72.3 crores were assigned to respondent and remaining amount was allotted to other Punjab procuring agencies. During pendency of arbitration proceedings, Food Corporation of India appointed the Committee of Senior Officers of the Corporation in respect of claims lodged by them before Indian Council of Arbitration, where the matters were pending in arbitration. Said committee obtained the report from all the districts of Punjab and decided that where there was no shortage of any kind of the paddy, and the paddy was disposed of or retrieved by Food Corporation of India, they made 3 categories of all the cases i.e. 374 cases for the crop year 1994-95 and as per 3 categories, 40 cases were those where the paddy was misappropriated by the millers and in that category there was no "Deed of Settlement". In 61 cases, the Food Corporation of India had issued 'No Due Certificates' and in the remaining cases the

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entire paddy was disposed of or retrieved and the entire amount had been deposited with Food Corporation of India. In the light of these categories, they directed Senior Regional Manager, Food Corporation of India, Chandigarh to execute the "Deed of Settlements". Thereafter, "Deed of Settlements" were prepared and signed by the millers. Petitioner averred that in the present case, the deed of settlement was signed by the petitioner as well as District Manager of the respondent. The district manager was competent to execute the deed of settlement, as the original agreement as well as claim before the Tribunal were lodged by the District Managers. This deed of settlement was executed as per the senior zonal office committee in respect of the paddy for the crop 1994-95. The deed of settlement was prepared by the senior panel advocates of the Hon'ble Supreme Court of India. Later on, this deed of settlement was also upheld by Hon'ble Supreme Court in six SLPs titled as FCI v. DEEP RICE MILLS AND OTHRS. Hon'ble Supreme Court of India had rejected the plea of Food Corporation of India that "Deed of Settlement" was not approved by their CMD, whereas there was no such document on the record which showed that "Deed of Settlement" had ever been sent to CMD and same had ever been put before CMD in any agenda. The entire record of Food Corporation of India in this regard was also called by Hon'ble Supreme Court of India in said Special Leave Petitions (SLPs), but FCI failed to show any document on the record in respect of their allegations. So, in the light of this, "Deed of Settlement" was upheld by Hon'ble Apex Court of India.

GROUNDS OF CHALLENGE

8. Aggrieved by the arbitral award dated 12.08.2012, petitioner has preferred the present objections under Section 34 of the Act, inter alia, on the following relevant grounds: -

i. That award passed by ld. Arbitrator is totally against the law and facts of the case;

ii. That ld. Arbitrator has not framed the legal issues in spite of the objections raised before petitioner;

iii. That there was deed of settlement, which was duly executed and admitted by FCI, but ld. Arbitrator had not decided the issue no.1 as per facts.

iv. That the findings given by ld. Arbitrator are not related to the issue, which are also against the law.

v. That there was no original claim before ld. Arbitrator and only on the basis of the photo copies award was passed, which is totally against the law.

vi. That as per the terms of the agreement, there was no breach committed by the petitioner. As per the public policy, the documents placed on the record before ld. Arbitrator clearly showed that the entire loss in sale of the paddy was compensated by the Central Government out of the subsidiary account. So, it is settled law that once the claim had been settled that could not be claimed afterwards from the petitioner, and the petitioner was not responsible for the sale of the paddy as there was no clause in the agreement for the sale of the paddy.

vii. That the CAG report had been furnished before ld. Arbitrator, which clearly showed that the sale was affected due to poor control and negligence on the part of the officials of the Food Corporation of India. Thus, the findings of ld. Arbitrator on issue no. 3 are also not legal and are liable to be set aside.

viii. That ld. Arbitrator did not give any finding on limitation issue, and reference was hopelessly time barred, as no document had been produced on record by FCI, which showed that the reference was within time.

ix. That the findings on issue no.4 are also wrong, since ld. Arbitrator admitted that FCI was responsible for delay and not allowed the interest, thus finding on this issue are also against the law. That the alleged agreement was not legal and valid agreement as no authorized person on behalf of the firm had executed the same.

x. That mandatory notice for invoking the arbitration had never been served as required under Section 21 of the Arbitration and Conciliation Act.

REPLY OF THE RESPONDENT

9. Respondent filed the reply contesting the petition and contended that petition is not maintainable within the four corners of Section 34, as ld. Arbitrator passed well-reasoned award. Respondent averred that this court does not sit as court of appeal over the findings of ld. Arbitrator. On merits respondent denied all the grounds taken by the petitioner.

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ARGUMENTS OF PETITIONER

10. Ld. counsel for petitioner argued that ld. Arbitrator has not at all considered the aspect of deed of settlement and had decided the claim and passed an award without appreciating the documents placed on record that entire loss in sale of paddy was compensated by the central government out of the subsidiary account. Ld. counsel argued that no document was filed by FCI to show that reference was within the stipulated time and entire claim was decided only on the basis of photocopies of documents and without original claim being filed before ld. Arbitrator. Ld. counsel argued that ld. Arbitrator grossly erred in not considering the vast documentary evidence available on record in right perspective. Ld. counsel argued that the reference was without any mandatory notice as required under section 21-A of the Arbitration & Conciliation Act, 1996 (as amended upto date), as it is admitted case that there is no notice on the arbitration record. Ld. counsel further argued that the present reference was against the public policy declared by Union of India for the disposal of the entire paddy stored in the different rice mills. The 'Deed of Settlement' was executed as per the public policy prepared by Food Corporation of India Head Office and plea had been taken by Food Corporation of India before the arbitrator that said 'Deed of Settlement' was not approved by CMD, but there was no such condition at the time of execution of 'Deed of Settlement'. Ld. counsel argued that in this case, respondent claimed 1.5 times economic costs on unmilled paddy, but there is

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no clause in the agreement, on the basis of which FCI could claim economic costs on unmilled paddy. Ld. counsel relied upon judgment of **Food Corporation of India v. S. K. International Rice Mills, MANU/DE/3980/2018** and referred to following observations: -

> *"39. The court cannot lose sight of the fact that awards have to be passed in consonance with public policy. The documents on record show that there were various levels of consultation which went into the decision to sell the paddy by means of open sale. This shows that the Government had reconciled to the fact that the best step to take was to sell in the market and recover the cost of the paddy. Further the FCI was also given a benefit of Rs. 120 crores by the Central Government to compensate for the losses suffered by it. This is evident from letter dated 29th March, 2000.*
>
> *40. The initiation of arbitration claim against the millers in the light of open sale notices and the correspondence, which is set out in the present case, clearly seems to be an erroneous step by the FCI against the miller and the documents on record shows clearly that even in the settlements entered into by FCI, it did not insist on the 1½ times of the economic cost of paddy. FCI is clearly being selective in the manner in which the arbitration cases are being pursued for more than two decades now. The FCI itself having taken a decision and given the option to the miller to purchase the paddy or having recovered the cost of the paddy by selling in the open market, was clearly in the knowledge of the fact that it had taken a policy decision consciously not to press the claim of economic cost. Despite this, in the arbitration proceedings it raised claims for the same which are totally untenable - except in the case where the millers had indulged in pilferage and siphoning off of paddy. Thus, the claim of 1½ times of the economic cost is not liable to be granted in favour of the FCI, in the facts of the present case."*

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11. Ld. counsel also relied upon judgments in **Food Corporation of India v. Shankar Rice and General Mills and Ors MANU/DE/4150/2018** as well as **Food Corporation of India (Amritsar) v. Lekh Raj Dhawan Rice & General Mills and Ors. MANU/DE/0103/2019.**

12. Ld. counsel for petitioner also relied upon the judgment in **Food Corporation of India v. M/s Deep Rice Mills 2011:DHC:5378-DB**, wherein it was held that: -

> *"3. The award in question has recognized the validity of a deed of settlement signed on 12.7.2006 between the General Manager, Food Corporation of India (FCI), Punjab region (acting through Area Manager) and M/s.Deep Rice Mills. Other awards pertained to similar agreements signed between Rice Mill owners and FCI.*
>
> *6. Similar disputes were pending between FCI and other Rice Mills. The number of Rice Mills being large, a policy decision was taken to try and effect a negotiated settlement and indeed, the Regional Managers of FCI, Zonal Manager of FCI as also the Area Managers of FCI started negotiating.*
>
> *11. FCI challenges the award alleging that the settlement was not approved by the Chairman-cum-Managing Director FCI.*
>
> *15. FCI is a statutory corporation. It is not the Government of India. Thus, concept of Business Allocation Rules would not be applicable to FCI. It relates to the indoor management of FCI as to who has the authority to act on behalf of FCI it was for FCI to have led evidence before the learned Arbitrator to show that the Area Manager was not authorized to enter into any such agreement and attempt made before us to rely upon some office orders is of no use. We highlight that before the learned Arbitrator the only stand taken was that the agreement in question did not have the approval of the Chairman-cum-Managing Director of FCI.*

16. It was never told to M/s.Deep Rice Mills that the Area Manager has no authority to execute any deed of settlement. Learned counsel for the appellant has no answer to the question: If the Area Manager had no authority to enter into any settlement why was he put in the forefront to negotiate. To the preceding sentence, we need to add that learned counsel for FCI admits that a policy decision was taken to negotiate with the rice millers and try and resolve the dispute across the table. Learned counsel further concedes that it was pursuant to the said policy decision that the Area Manager, FCI commenced the negotiations with M/s.Deep Rice Mills. Counsel concedes that there is no material with FCI to show that the brief entrusted to the Area Manager, FCI was to do preliminary ground-work i.e. if a settlement was possible, to outline the contours thereof and before finalizing the settlement to take the approval from the senior officers.

17. Be that as it may, we are concerned with the validity of an award and the view taken based upon the evidence. The issue adjudicated by the Arbitrator is: Whether the settlement in question binds FCI. Within the contours of Section 34 of the Arbitration & Conciliation Act 1996, we see no scope to set aside the award and therefore we concur with the view taken by the learned Single Judge that the award cannot be set aside."

13. Ld. counsel also relied upon copy of orders passed by Hon'ble Supreme Court in **FCI v. M/s Deep Rice Mills bearing SLP (C) CC No. 5424**, wherein vide order dated 17.09.2012, Special Leave Petitions against judgment passed by Delhi High Court were dismissed.

ARGUMENT OF RESPONDENT

14. Per contra, ld. counsel for the respondent argued that objection filed by the petitioner against the award is not maintainable as the award passed by ld. Arbitrator is well reasoned and as per the

terms and condition of the agreement entered between the parties. Ld. counsel argued that the court cannot sit as an appeal, under section 34 of the Act. The award was passed by ld. Arbitrator on the basis of the facts, which have been pleaded by the parties, evidence and the arguments advanced before him. Ld. counsel submitted that in the present matter ld. Arbitrator framed issues and has given the findings on each issue on the basis of the pleadings as well as evidence led by the parties and argument made by the parties.

15. Ld. counsel argued that the grounds raised in the petition Section 34 of the Act as well as written submission were never raised during the proceedings, hence petitioner is barred to raise the same in the section 34 of the Act, as scope of the section 34 of the Act is limited and cannot be treated like a first appeal. Ld. Arbitrator clearly held that no compromise and settlement had been arrived between the party and on the basis of the pleadings, ld. Arbitrator came to the conclusion that the CMD of the FCI had not approved the settlement. The proposal until finally accepted cannot be a binding contract and deed of the settlement was not concluded and same was not a valid document. Hence, the grounds raised by petitioner have no illegal effect. Ld. counsel argued that Public Interest Litigation were filed before Hon'ble High Court of Punjab & Haryana titled as **P.S. Khurana vs. Union of India & Ors.** CWC no.18980 of 1995 and **Ajay Jagga vs. Union of India & Ors.,** CWC no. 18981 of 1995. Hon'ble High Court of Punjab & Haryana was pleased to take

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note of the fact that the huge stock of paddy was lying with miller including petitioner herein and the condition of the paddy was deteriorating and miller were not milling the paddy and thereafter, Hon'ble High Court directed to take appropriate order regarding the disposal of 1994-95 paddy stock and further directed that in case of paddy stock of 1994-95 crops were not disposed of within a period of three months, such milling stock would be sold in open market and in that eventuality no rice miller in the State of Punjab would be allowed to purchase the stock, either directly or indirectly. Hon'ble High Court further ordered that said order would not in any way prevent and hamper FCI to claim damages or compensation from the mill owner, for the alleged violation of the agreement executed by them. Accordingly, the respondent had no option but to sell/dispose of the un-milled paddy in order to mitigate the losses further and to minimize the losses, after the contract period was over i.e. 28.02.1995.

16. It was further argued that it is an admitted fact that time was the essence of the agreement between the parties and the agreement dated 05.10.1994 had to be concluded by the 28 February 1995, as mentioned in the clause 9 (III) and clause 6 of the agreement. It was also mentioned that the paddy was at the premises of the petitioner and under the joint control of the parties herein, and as per the term and condition 7, 8(III) and 16 in case there was shortfall in the delivery of the paddy, respondent was entitled to the amount equivalent to one and half time of economic cost of

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the paddy. Respondent averred that time period of the delivery of the rice was clearly mentioned in para 9(III) of the agreement between parties. Respondent argued that FCI had given the various varieties of paddies for milling weighing 30192.10 quintals in 46,476 bags and petitioner failed to mill the paddy and failed to give the rice as per the term and condition of the agreement. Petitioner milled only 7,780.96 quintals and 4724.50 quintal paddy was delivered to other millers. Balance paddy 26,901 bags containing 17,527.84 quintal of paddy remained un-milled, hence petitioner committed a breach of the terms and condition of the agreement and as per the terms and conditions, the respondent was entitled to claim damages. As per clause 16 of the agreement respondent was entitled for one and half time of the economic cost. Ld. counsel argued that ld. Arbitrator rightly and legally came to the conclusion that as per the term of milling agreement clause 7, 8(III) and 16, there was a short fall in the delivery of the rice of the paddy. Respondent was entitled to the amount equivalent to one and half time of the economic cost of paddy, since the economic cost of the super fine paddy for the crop year 1994-95 had been worked out at Rs. 876.21/per quintal. Respondent was also entitled to the cost of gunnies as per the term and condition of the agreement and also interest @ 12% p.a. with effect from 28.02.1995. Ld. counsel argued that ld. Arbitrator, while deciding issue no. 3 & 4 rightly came to the conclusion that there was a default on the part of the petitioner as paddy 17,527.84 quintal was not milled by the petitioner. Ld. counsel argued that Ld. Arbitrator was bound to decide the case within the terms and conditions of the agreement entered between the parties. Ld. counsel argued that with reference to section 34 of the Arbitration and Conciliation Act, petition filed by the petitioner is beyond the scope of section 34 of the Act.

17. Ld. counsel contended that as per section 76 of the Contract Act, the party who committed the breach is liable to pay the same as per the clause of the agreement, irrespective of loss suffered by the party. In the present matter the loss was fixed as 1.5 times of the economic cost.

APPRECIATION OF ARGUMENTS, FACTS & LAW

18. The crux of the legal principles explained by superior courts in respect of ambit of Section 34, is that Arbitrator is a Judge of the choice of the parties and his decision, unless there is an error apparent on the face of the award which makes it unsustainable, is not to be set aside even by the court, even if the court of law could come to a different conclusion on the same facts. The court cannot reappraise the evidence and it is not open to the court to sit in appeal over the conclusion of the Arbitrator. It is not open to the court to set aside a finding of fact arrived at by the Arbitrator and only grounds on which the award can be set aside are mentioned in the Arbitration Act. Where the Arbitrator assigns cogent grounds and sufficient reasons and no error of law or misconduct is cited, the award will not call for interference by the court in exercise of the power vested in it.

19. In **Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49**, Court held that an award could be said to be against the

public policy of India, inter alia, in the following circumstances:-

> *"1. When an award is, on its face, in patent violation of a statutory provision.*
>
> *2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.*
>
> *3. When an award is in violation of the principles of natural justice.*
>
> *4. When an award is unreasonable or perverse.*
>
> *5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.*
>
> *6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."*

20. Hon'ble Supreme Court in the case of ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India, 2019 SCC OnLine SC 677***, held that under Section 34 (2A) of the Act, a decision which is perverse while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. A finding based on the documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties and therefore, would also have to be characterized as perverse. It was held that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision, would be perverse and liable to be set aside on the ground of patent illegality.

21. **Issues Framed & Findings Given by ld. Arbitrator**

i. **Was there a valid contract between the claimant (FCI) and the Respondent (M/s Ganesh Rice and General Mills) in the matter of agreement dated 19th October 1994?**

Findings: (Relevant Part)

> *"It is undisputed that an agreement was signed between the Claimant and the Respondent on 19 10.1994 In fact the Respondent has referred to clauses in this agreement in his submissions on a number of occasions. The agreement between them was valid. and accepted as such by both the parties. This fact is also undisputed. It follows therefore that both the Claimant and the Respondent were contractually bound the terms and conditions of the agreement in question. Hence there was indeed a valid contract between the Claimant and the Respondent."*

ii. **Whether there was any breach of agreement by either of the parties.**

Findings: (Relevant Part)

> *"There is nothing to indicate on record that at any stage the respondent had raised any question about the poor quality of the paddy or had brought the matter to the notice of the Claimant. It is a matter of common prudence that if the me mill was dissatisfied with quality of paddy supplied and considered the paddy **** unmillable then would have immediately brought the matter to the notice of the concerned officials of the FCI, and it would only be reasonable that such an important matter would have remained on record. The Respondent has not produced any record/document supporting his claim that the matter of inferior quality of paddy was brought to the notice of the concerned officers of FCI. Hence I am unable to accept this argument of the Respondent."*

iii. **Does the FCI have a valid claim arising out of issue number one?**

Finding: (Relevant Part)

"The agreement in clear terms lays down the consequences of non-fulfillment of the terms of the agreement. This agreement was s1gned by the Respondent with full knowledge of the consequences of their inability to fulfill the terms of the contract That the Government of India had fixed prices for selling of paddy and that the FCI had disposed off the balance paddy at the price fixed by the government is not relevant for considering the present case. It is one thing for the FCI to sell paddy at price, the manner of fixation of which is an internal matter between the FCI and the Government of India, and completely another thing to demand fulfillment of the clauses of a valid agreement signed between the claimant and the respondent. The fixing of paddy price by the Government of India has therefore no bearing on the agreement signed between the Claimant and the Respondent. This therefore cannot be accepted as a valid argument.

The third point that the respondent had signed blank agreement in good faith and that the arbitration clause was inserted later on can never be accepted as valid ground, once it is accepted that there was a valid agreement between the claimant and the respondent. Moreover the Respondent in his affidavit has more than once referred to different clauses of the agreement, at the same he cannot therefore that this agreement was fraudulently obtained. The other points of objection by the Respondent has already been gone into earlier and, for reasons already stated, cannot be accepted as a valid argument against the claim of the claimant the Food Corporation of India."

iv. **If the answer to the issue number three is in the affirmative, is the present claim of the FCI in accordance with relevant clause?**

Findings: (Relevant Part)

"The Respondent has according to a letter from them to the claimant (letter dated 2.8.96) mentioned that he had not violated any clause of the agreement, nor had they committed

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any breach of contract. At no stage during the arbitration proceeding has the respondent given any details in support of this claim; neither has the respondent questioned the details regarding the paddy/bags supplied and/or balance remaining with the respondent.

After taking into account all facts and figures placed before me I find that the claim preferred by the FCI is in accordance with clause 16 C of the agreement. In view of the written agreement dated 19.10.94 between the claim and the respondent I am unable to accept the claim of the respondent that the claimant's claim under clause 16C is not tenable."

22. In the present case, the core issue between the parties had been depending on the acceptability of the "deed of settlement". Miller had been relying on the same, while FCI had been denying enforceability of the same. However, it is admitted situation that similar kind of cases involving same or similar kind of deed of settlement between FCI and other Millers, had been subject matter of judicial scrutiny before Hon'ble Delhi High Court in different matters. There is no denial of those decisions being given by Delhi High Court, from the side of FCI. However, ld. counsel for FCI submitted that those decisions do not lay down a precedent for this case. In order to assess this contention, it will be relevant to mention that FCI does not deny same kind of deed of settlement being executed with Miller in this case. It is also not the case of FCI that paddy was misappropriated by the Miller in this case. Thus, as per admitted facts, Miller herein had not milled the paddy, as per the initial contract between the parties. FCI had retrieved and sold off the unmilled paddy. In such situation, I find that the set of facts and

deed of settlement as dealt with by Delhi High Court in the cases of **S.K. International Rice Mills** or **Deep Rice Mills** (supra), were the same as pertaining to this case. Therefore, I find that the interpretation given in those cases in respect of enforceability of deed of settlement, would be applicable to this case as well.

23. Besides aforesaid point, there is another catch as well, which needs to be mentioned here. Ld. counsel for Miller referred to contract and submitted that as per terms and conditions of the contract (clause-13), in case the Miller did not mill the paddy within stipulated time, FCI had the option to get it milled from other miller and to claim damages incurred in that process from the original Miller. This argument could not be dislodged by ld. counsel for FCI. However, as per admitted case, FCI did not get the paddy milled through other Miller, rather it sold the paddy in the open market. FCI has taken support from the orders passed by Punjab & Haryana High Court in **CWC no.18980 of 1995 & 18981 of 1995**, to justify disposal of paddy in the market. However, fact remains that FCI also, did not get the paddy milled because of peculiar situation prevailing at that time. The penalty of one and half times of the economic loss, thus, was not based on particular contractual term. Hence, the observations made by Delhi High Court in above-mentioned cases, become more relevant, so as to show that in the given scenario, when FCI was admittedly provided grant by the government out of a public policy peculiar to prevailing situation, then FCI was not justified to claim damages on account of economic loss, as done by it in

this case as well as in other similar cases. The deed of settlement, was thus, very much enforceable because it was executed in the background of prevailing circumstances. FCI was not justified in disowning this settlement deed, on the grounds of same being not approved by its CMD. I need not add anything more on this aspect, in view of categorical observations already made by Delhi High Court in above-mentioned cases.

DECISION

24. In view of my foregoing discussions, observations and findings, I find that there was no occasion to entertain the claim made by FCI, but same was not only entertained, rather it was accepted also. Therefore, award in question suffers from perversity, and cannot be sustained. Hence, petition is allowed.

File be consigned to record room after due compliance.

PULASTYA PRAMACHALA

Digitally signed by PULASTYA PRAMACHALA
Date: 2026.06.01 16:35:53 +0530

Pronounced in the Open Court on this 01st Day of June, 2026

(PULASTYA PRAMACHALA)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi